

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

DECEMBER 14, 2004

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, DC 20001, pursuant to notice at 9:46 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING MEMBERS PRESENT:

GEOFFREY H. GRIFFIS,	Chairperson
RUTHANNE G. MILLER,	Vice-Chairperson
CURTIS L. ETHERLY, JR.,	Board Member
JOHN A. MANN, II,	Board Member, NCPC

ZONING COMMISSION MEMBER PRESENT:

KEVIN HILDEBRAND	Commissioner, NPS
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY,	Deputy Secretary
BEVERLEY BAILEY,	Zoning Specialist

(This transcript constitutes the minutes from the public hearing held on Tuesday, December 14, 2004.)

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APPEARANCES (Continued)

OFFICE OF PLANNING STAFF PRESENT:

JOHN FONDERSMITH,	Office of Planning
JOHN MOORE,	Office of Planning
STEVEN MORDFIN,	Office of Planning
KAREN THOMAS,	Office of Planning

D.C. OFFICE OF THE GENERAL COUNCEL STAFF PRESENT:

SHERRY GLAZER, ESQ.

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C-O-N-T-E-N-T-S

<u>AGENDA ITEM</u>	<u>PAGE</u>
APPLICATION PAUL AND FRANCIS O'REILLY 17251 ANC-3F	11
FREDERICK D. COOKE, JR., ESQ. 1150 Connecticut Avenue, N.W. Suite 600 Washington, D.C. 20036	12
WITNESSES DIRECT CROSS REDIRECT	
PAUL O'REILLY 20 42/48 61	
DAVID KACAR 29 42/48 --	
GOVERNMENT REPORTS	
JOHN FONDERSMITH, Office of Planning . .	64
	CROSS 74/75
TESTIMONY BY CATHY WISS, ANC-3F	79
TESTIMONY BY GEORGE PSILLOS, PARTY IN OPPOSITION	98
ACTION TAKEN: DOCUMENTS REQUESTED . . .	110
DECISIONMAKING SET FOR 1/4/05	111

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CONTENTS (Continued)

<u>AGENDA ITEM</u>	<u>PAGE</u>
APPLICATION OF AMERIDREAM AMBER OVERLOOK LLC, ET AL. 17252 ANC-7E	115
NORMAN M. GLASGOW, JR., ESQ. Holland & Knight 2099 Pennsylvania Avenue, N.W. Suite 100 Washington, D.C. 20006 (202) 419-2455	119
WITNESSES	
JOHN MAISTO	122
ROBERT NEWMAN	124
GOVERNMENT REPORTS	
JOHN MOORE, Office of Planning	143
VOTE ON MOTION TO APPROVE APPLICATION.	162
APPLICATION OF LAUREL CAPP 17254-2B	169
ANDREW FERNEBOK	
ACTION TAKEN: HEARING POSTPONED UNTIL 3/8/05	172
APPLICATION OF 3DG DELTA LLC 17255 ANC-1A	173
RAYMOND SHEM AND JOHN GOLDMAN	173
WITNESS	
CHARLES VINSON	181

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CONTENTS (Continued)

<u>AGENDA ITEM</u>	<u>PAGE</u>
APPLICATION OF 3DG DELTA LLC (Continued)	
GOVERNMENT REPORTS	
STEVEN MORDFIN, Office of Planning . . .	187
VOTE ON MOTION TO APPROVE APPLICATION. .	199
APPLICATION OF D.C. FIRE AND EMS DEPARTMENT	
17253 ANC-8A	201
RALPH CYRUS, JR.	202
GOVERNMENT REPORTS	
KAREN THOMAS, Office of Planning	205
TESTIMONY BY LATESHA HUDSON, ANC-8A . .	214
VOTE ON MOTION TO APPROVE APPLICATION. .	218
APPLICATION OF TEOFILA AYALA	
17231 ANC-1A	219
EDWARD L. DONOHUE, ESQ.	221
Holland & Knight 2099 Pennsylvania Avenue, N.W. Suite 100 Washington, D.C. 20006 (202) 419-2455	
WITNESSES	
TEOFILA AYALA	229
EDWARD NUNLEY	231
GOVERNMENT REPORTS	
JOHN MOORE, Office of Planning	243
TESTIMONY BY JACQUELINE ARGUELLES ANC-1A	261
VOTE ON MOTION TO APPROVE APPLICATION. .	280

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P-R-O-C-E-E-D-I-N-G-S

(9:46 a.m.)

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the 14th of December 2004 public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me today is Vice Chair Ms. Miller. Representing the National Capital Planning Commission is Mr. Mann, and Mr. Etherly will be joining us momentarily. He was just called out and will be detained briefly.

Copies of today's hearing agenda are available for you. They are located on the wall where you entered into the hearing room. You can pick it up and see where you are on our schedule.

There are several very important aspects, and I'm going to go through them in our opening remarks. First of all, all proceedings before the Board of Zoning Adjustment are recorded. They are recorded in two fashions: one, the court reporter, who is sitting to my right on the floor, is creating the official transcript for the record. Second, we are being broadcast live on the Office of Zoning's website. So attendant to both of those, there are several specific things that we ask of you:

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1 First of all, everyone should refrain from
2 making any disruptive noises or actions in the hearing
3 room so that we don't interrupt our proceedings.

4 Secondly, I would ask that people turn off
5 cell phones and beepers at this time so that you don't
6 disrupt anyone giving testimony or our broadcast.

7 Thirdly, when coming forward to speak to
8 the Board, I would ask that everyone fill out two
9 witness cards. Witness cards are available for you at
10 the table you entered into. They are also available
11 at the table in front of us where you will give
12 testimony. Those two witness cards are to be filled
13 out prior to coming forward and given to the recorder
14 sitting on my right.

15 Then you will need to just come forward,
16 make yourself comfortable, and you will need to state
17 your name and address for the record before speaking.
18 You only need to do that once. Obviously that is the
19 way we will give you credit for all the important
20 things that you will be telling the Board today.

21 The order of procedure for special
22 exceptions and variances:

23 First, we hear from the applicant, the
24 presentation of their case and any witnesses and
25 evidence that they have to present.

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1 Second, we will hear government reports
2 attendant to the application.

3 Third, we will hear from the Advisory
4 Neighborhood Commission within which the property is
5 located.

6 Fourth, we will hear parties or persons in
7 support of the application.

8 Fifth would be parties or persons in
9 opposition to the application.

10 Sixth, finally, we will hear closing
11 remarks, summations, rebuttal testimony from the
12 applicant in each case.

13 Cross-examination of witnesses is
14 permitted by the applicant and parties in the case.
15 The ANC within which the property is located is
16 automatically a party in the case; therefore will be
17 able to conduct cross-examination.

18 The record will be closed at the
19 conclusion of our proceedings and hearings on all
20 cases today except for any material that is
21 specifically requested by the Board, and we will be
22 very specific as to what is to be submitted into the
23 Office of Zoning and when it is to be submitted into
24 the Office of Zoning. After that material is
25 received, it should be very clear that the record

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1 would finally be closed and no other information would
2 be accepted into the record.

3 It's an important aspect to really
4 understand. Fundamentally, we're creating a record
5 before us today. All the things that are told to us,
6 submitted, that haven't already been submitted will be
7 what the Board deliberates on. The Board must
8 deliberate exclusively on that record that is created
9 before us, so it's very important to make sure that
10 you do get any evidence or testimony and also to
11 submit information that is requested by the Board.

12 The Sunshine Act requires that this Board
13 conduct all its proceedings in the open and before the
14 public. This Board may enter into executive session
15 both during or after a hearing on the case in order to
16 deliberate on a case or just to review the record.
17 This would be in accordance with our rules and
18 regulations and would also be in accordance with the
19 Sunshine Act.

20 The decision of the Board in contested
21 cases, as I have stated, must be based exclusively on
22 the record that is created before us, so in addition
23 to that which I have already stated, we would also ask
24 that people present today not engage Board members in
25 private conversations so that we do not give the

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1 appearance this afternoon of gaining information
2 outside of that public record that is being created
3 before us.

4 The Board will now consider any
5 preliminary matters. Preliminary matters are those
6 which relate to whether a case will or should be heard
7 today such as requests for postponements,
8 continuances, or withdrawals, or whether proper and
9 adequate notice of the application has been provided.

10 If you are not prepared to go forward with
11 a case today or you believe the Board should not
12 continue to hear a case today, I would ask that you
13 come forward and have a seat at the table as an
14 indication of having a preliminary matter.

15 Not noting anybody storm the table with
16 preliminary matters in hand, I would say a very good
17 morning to Ms. Bailey, who is at my very far right,
18 and Mr. Moy, both with the Office of Zoning. The
19 Office of Attorney General is also with us this
20 morning.

21 Ms. Bailey, if you wouldn't mind -- and I
22 would ask that everyone who is going to give testimony
23 today to please stand and give your attention to Ms.
24 Bailey. She is going to swear you in.

25 (Witnesses sworn.)

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1 CHAIRPERSON GRIFFIS: Ms. Bailey, are you
2 aware of any preliminary matters for the Board at this
3 time?

4 MS. BAILEY: Mr. Chair and to everyone,
5 good morning.

6 There is a preliminary matter. It has to
7 do with the first case that is on the docket, Mr.
8 Chairman, Application Number 17250. That application
9 was withdrawn.

10 CHAIRPERSON GRIFFIS: Thank you. No
11 action by the Board required.

12 MS. BAILEY: None, Mr. Chairman.

13 CHAIRPERSON GRIFFIS: Very well. Then
14 let's call the next case in the morning.

15 APPLICATION OF PAUL AND FRANCIS O'REILLY

16 17251 ANC-3F

17 MS. BAILEY: Application Number 17251 of
18 Paul and Francis O'Reilly, pursuant to 11 DCMR 3104.1,
19 for a two-story rear addition to an existing
20 single-family row dwelling under Section 223 not
21 meeting the rear yard requirements at Section 404,
22 side yard requirements, Section 405, and the
23 nonconforming structure provisions, 2001.3. The
24 property is located in the R-1-B District at premises
25 3715 Albemarle Street, Northwest. The property is

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1 also known as Square 1888, Lot 48.

2 CHAIRPERSON GRIFFIS: Good morning.

3 MR. COOKE: Good morning.

4 CHAIRPERSON GRIFFIS: Let me just have you
5 introduce yourselves for the record.

6 MR. COOKE: Good morning, Mr. Griffis and
7 members of the Board of Zoning Adjustment. My name is
8 Frederick D. Cooke, Jr. I'm counsel for the
9 applicant, the proponent, Mr. Paul O'Reilly, who is
10 seated to my immediate left, and to my far left is our
11 architect, Mr. David Kacar.

12 CHAIRPERSON GRIFFIS: Good. Who else is
13 here attendant to this application? Excellent. And
14 the ANC is also present. Ms. Wiss, you're
15 representing the ANC; is that correct?

16 MS. WISS: Yes.

17 CHAIRPERSON GRIFFIS: 3F?

18 MS. WISS: Yes.

19 CHAIRPERSON GRIFFIS: Good. Very well.

20 Let's proceed. Did you have an issue?

21 You need to be on a microphone and you need to
22 introduce yourself, please, Ms. Wiss.

23 MS. WISS: Cathy Wiss from ANC-3F. I just
24 was wondering, I believe in the case file is what may
25 be an application for party status for Mrs. Emilia

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1 Psillos.

2 CHAIRPERSON GRIFFIS: What makes you have
3 that indication?

4 MS. WISS: Well, there is a letter in
5 there that --

6 CHAIRPERSON GRIFFIS: Okay. Is she
7 present?

8 MS. WISS: It doesn't say "application for
9 party status" because she did not receive the forms
10 from you.

11 CHAIRPERSON GRIFFIS: Understood.

12 MS. WISS: Or she did -- if she did, it
13 was not in her name and she may have tossed it not
14 knowing it was intended for her. She is the next door
15 neighbor.

16 CHAIRPERSON GRIFFIS: Understood. I'm not
17 sure what we do with all of that.

18 MR. COOKE: Mr. Griffis?

19 CHAIRPERSON GRIFFIS: Yes?

20 MR. COOKE: What are we to do with that?

21 CHAIRPERSON GRIFFIS: Indeed.

22 MR. COOKE: There's a huge amount of
23 speculation as to what was or was not --

24 CHAIRPERSON GRIFFIS: And we have the
25 source right here, so let's cut to the chase.

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1 MR. COOKE: I'm for that.

2 CHAIRPERSON GRIFFIS: Would you like to
3 come forward, please, and just introduce yourself for
4 the record? Have a seat. Make yourself comfortable.

5 MR. PSILLOS: Good morning, Mr. Griffis
6 and members of the Board. My name is George Psillos.
7 I am the son of Emilia Psillos, the neighbor at 3713
8 Albemarle Street, Northwest.

9 CHAIRPERSON GRIFFIS: Good. And you have
10 heard this great speculation that perhaps maybe you
11 were intending on behalf of your mother to request
12 party status in this case.

13 First of all, I ask, do you understand
14 what that means and what it involves? There are two
15 ways to participate in any hearing before the BZA, and
16 that is as a person providing testimony or as a party,
17 and I will get into that further based on your answer.

18 MR. PSILLOS: I do request party status
19 for myself and my mother.

20 CHAIRPERSON GRIFFIS: Okay. So you are
21 aware, of course, as a party, you are a full
22 participant in this case. You will be able to conduct
23 cross-examination if granted party status. You will
24 also be asked to present a full case. You will also
25 be open to calling witnesses, providing any other

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1 evidence. You will also be required, of course, on
2 anything that the applicant is required to submit, we
3 will also require the same of you, maybe even
4 including findings of facts, conclusions of law,
5 anything of that nature. That's the level you wanted
6 to participate at.

7 MR. PSILLOS: Yes.

8 CHAIRPERSON GRIFFIS: Okay. A couple of
9 quick technical things, then. That was aware to us or
10 should have been somewhat in Exhibit Number 21? Is
11 that the Board's understanding? Which would have been
12 submitted on the 6th of December.

13 MR. PSILLOS: Documents may have been sent
14 to my father's -- under my father's name.

15 CHAIRPERSON GRIFFIS: Why?

16 MR. PSILLOS: He has been deceased since
17 1983.

18 CHAIRPERSON GRIFFIS: What gives you an
19 indication that may have been sent there?

20 MR. PSILLOS: Because he is still listed
21 as owner of the home along with my mother.

22 CHAIRPERSON GRIFFIS: Then that would have
23 been the proper way notification would have been
24 addressed.

25 Okay. Let's hear from the applicant.

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1 Opinion?

2 MR. COOKE: I do not believe that party
3 status should be granted. The rules require that
4 notice of party status participation be made within 14
5 days of notice. That wasn't done. Mr. Psillos is not
6 a resident of the adjacent property; he is the son of,
7 by his own statement, the son of the resident. He
8 does not live, to my knowledge, within the District of
9 Columbia.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. COOKE: So my argument would be that
12 this is not a proper grant of party status or, rather,
13 a proper request for party status that this Board
14 should grant.

15 CHAIRPERSON GRIFFIS: Okay. Mr. Psillos,
16 you are here today and you were going to represent
17 Emilia Psillos; is that correct?

18 MR. PSILLOS: Yes.

19 CHAIRPERSON GRIFFIS: Okay. That gets rid
20 of one particular issue in terms of clarification.
21 Now in terms of timing -- yes, Ms. Miller, did you
22 have a comment?

23 VICE CHAIRPERSON MILLER: No.

24 CHAIRPERSON GRIFFIS: We have a timing
25 issue that the Board would have to take up. Mr.

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1 Psillos, can you just quickly explain to me why you
2 believe, if granted party -- or why you believe that
3 you are distinctly or uniquely affected in character
4 or kind if this was to be approved?

5 MR. PSILLOS: My mother is, unfortunately,
6 not well versed with the language, with English.

7 CHAIRPERSON GRIFFIS: I understand.

8 MR. PSILLOS: She has difficulty reading
9 the language and speaking the language. I feel that
10 I -- you know, her older son is qualified to be
11 representing --

12 CHAIRPERSON GRIFFIS: We're not
13 questioning that. You're going to represent her if
14 granted party status. What we're trying to get to is
15 whether we grant you party status. So why would Ms.
16 Psillos be uniquely, distinctly affected in character
17 other than others around the area or the general
18 public?

19 MR. PSILLOS: She is the immediate
20 attached neighbor to 3715. There are issues that
21 affect her most directly.

22 CHAIRPERSON GRIFFIS: Good. And they are
23 actually well stated in 21 and Exhibit Number 26.

24 Other questions from the Board?

25 (No response.)

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1 CHAIRPERSON GRIFFIS: Good. Is there any
2 opposition to waiving our time requirements in terms
3 of accepting the application for party status and
4 hearing it today? Any opposition or any opinions from
5 the Board?

6 VICE CHAIRPERSON MILLER: I have no
7 opposition. I think a good case has been made for Ms.
8 Psillos not seeing the forms, that they were addressed
9 to her deceased husband, and there is also a language
10 problem in this case. So I think it's a good case for
11 a waiver.

12 CHAIRPERSON GRIFFIS: Okay. That being
13 said, we can accept this, then, as the application of
14 party status based on Exhibit Number 21 and then
15 supported also with Exhibit Number 26.

16 We would move on to the next, then. Let
17 me just ask if there is another -- give you an
18 opportunity to make another statement based on whether
19 the party status should be approved or not.

20 MR. COOKE: No, Mr. Griffis. We are
21 comfortable with accepting the Board's ruling. We
22 disagree with it, but we're comfortable with accepting
23 the Board's ruling.

24 CHAIRPERSON GRIFFIS: Very well. Okay.

25 Let me hear any other deliberations on

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1 granting party status. Any other comments?

2 (No response.)

3 CHAIRPERSON GRIFFIS: If not, can I take
4 it as consensus, then, of the Board that we grant
5 party status to Ms. Psillos in this case, who will be
6 represented by herself and her son? Excellent. No
7 opposition stated, then let's move on.

8 What I'm going to do, Mr. Psillos -- is
9 that correct, the way I'm pronouncing it?

10 MR. PSILLOS: Psillos.

11 CHAIRPERSON GRIFFIS: Psillos.

12 MR. PSILLOS: Thank you.

13 CHAIRPERSON GRIFFIS: Okay. I'm going to
14 ask you just to have a seat back where you were.
15 We're going to have the case presentation. You will
16 be brought up to do cross-examination, along with the
17 ANC, and then we will move quickly through this. So
18 that being said, let's get to it.

19 MR. COOKE: We will proceed and I will
20 start by offering testimony from Mr. O'Reilly.

21 CHAIRPERSON GRIFFIS: Good. It's all you
22 now. I'm going to try not to interrupt, which is not
23 my nature.

24 Whereupon,

25 PAUL O'REILLY,

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1 the applicant, was called as a witness and was
2 examined and testified as follows:

3 DIRECT EXAMINATION

4 MR. COOKE: Mr. O'Reilly, would you state
5 your full name?

6 MR. O'REILLY: Paul James O'Reilly.

7 MR. COOKE: And your address?

8 MR. O'REILLY: 3715 Albemarle Street,
9 Northwest, Washington, D.C.

10 MR. COOKE: How long have you lived there?

11 MR. O'REILLY: Ten years.

12 MR. COOKE: And are you the --

13 CHAIRPERSON GRIFFIS: I'm sorry. Your
14 microphone needs to be on.

15 MR. COOKE: Are you the applicant or the
16 proponent in this proceeding today?

17 MR. O'REILLY: Yes, I am.

18 MR. COOKE: What is it that you propose to
19 do, to seek permission from the Board to do in your
20 application?

21 MR. O'REILLY: It's a two-story addition
22 to the existing structure.

23 MR. COOKE: And that addition would be
24 added to the front, the rear, the side of your home?

25 MR. O'REILLY: To the rear of the home.

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1 CHAIRPERSON GRIFFIS: We can cut through
2 a lot of this stuff, and very quickly, if you want to
3 just describe what he is doing and move on with it.
4 I mean, obviously we have all this in the record and
5 you don't need to introduce all that for us as it's
6 already in.

7 MR. COOKE: Okay. That's fine.

8 Could you describe how you came to propose
9 to begin this addition?

10 MR. O'REILLY: Certainly. We moved into
11 our house over the last ten years; the house flooded
12 four times, to a point where --

13 CHAIRPERSON GRIFFIS: I'm sorry. What
14 four times?

15 MR. O'REILLY: I'm sorry.

16 CHAIRPERSON GRIFFIS: Flooded four times?

17 MR. O'REILLY: The house flooded four
18 times -- in 2002 to the extent where it was about over
19 a foot of water in the house, in the basement.

20 At that time, I didn't know what to do.
21 I called a contractor. He said he will look into it.
22 In the meantime, I was experiencing -- my wife was
23 very ill, I had ruptured a disk in my back, and I just
24 said, we'll figure it out.

25 He said, "I'll do some work on the

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1 grading. I can regrade the yard so that the water
2 flows west and out the driveway," and I said, "Fine,
3 you know, go ahead and do it." Then he said, "I will
4 also put in a retaining wall. That way, we can
5 prevent the water from coming into your house." At
6 that point, I said, "Fine."

7 After that, he started digging for a
8 retaining wall. I hired him, said, "Fine, go ahead,
9 do the work." He started digging for a retaining
10 wall, then he said, "You know, I can cover over the
11 open storage area, which will further lessen any water
12 coming in." You know, not a problem.

13 So in the interim, I was going back and
14 forth to the doctors with my wife. They couldn't
15 figure out what was wrong with her. I was focusing on
16 my own problems as well, my health problems. And as
17 he was doing the work, he then came to me, he said,
18 "You know, I know your wife is not getting out, she
19 has been bedridden, you know, days upon days on end."
20 He said, "I can put in a couple of porches for you.
21 It's not a big deal." He gave me a good price. I
22 said, "Okay. Fine. Go ahead. Take care of that."

23 CHAIRPERSON GRIFFIS: As is a contractor's
24 nature -- to find more work when they are in there.

25 MR. O'REILLY: Well, yes. He came in with

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1 something little and it just took on a life of its
2 own.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. O'REILLY: You know, at that point,
5 you know, I hired him, I paid him, "Just take care of
6 it." He was a professional, he came highly
7 recommended. He started doing the work.

8 Two-thousand-three was an awful year for
9 weather. There was like five feet of rain. That
10 slowed everything down. I really didn't -- you know,
11 wasn't really focusing too much on that.

12 After that, DCRA came by, they put a
13 stop-work on. They said, "You didn't pull any
14 permits," and I confronted him. He said, "No, I
15 didn't." I fired him. I hired an architect and went
16 down to the DCRA, pulled some permits for work that
17 had to be done. There were windows ordered, there
18 were gutters ordered, just extraneous stuff. Then I
19 spoke to someone at DCRA and they said, "You need a
20 special exception," and Mr. Kacar was hired to take
21 care of that, do design work and all that.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. O'REILLY: Again, things were just
24 delayed. My wife -- I had to rush her to the
25 hospital. She almost died. I have just been dealing

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1 with this. When the project stopped -- we haven't
2 done anything for almost a year now, but we just sat.
3 But I did finish the windows and the gutters and did
4 the regrading so that there is -- you know, the water
5 no longer flows into the house, but down.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. O'REILLY: And that's where we are.
8 And we are here today.

9 CHAIRPERSON GRIFFIS: Good. We're
10 certainly sorry to hear about you and your wife.

11 Can you just briefly tell me in terms of
12 -- what we're looking at here is actually a special
13 exception under 223, and so the requirements for us to
14 look at is whether this would have any impact or undue
15 impact on light and air, privacy and use of the
16 adjacent properties. Do you want to just give me your
17 opinion of that and what you have come to understand?

18 MR. O'REILLY: In working with Mr. Kacar,
19 I have learned that on the side of the house to the
20 west of me, that it's about nine feet and there's not
21 a lot of problems there with respect to privacy. For
22 the rear setback, the lot is -- the lots in my area
23 are uniquely small. They are unusual compared to any
24 other lot sizes in that area. So the rear setback is
25 about eight feet, plus-minus, short --

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1 CHAIRPERSON GRIFFIS: But does that mean
2 it's going to have more impact or less impact?

3 MR. O'REILLY: No.

4 CHAIRPERSON GRIFFIS: What is the impact?

5 MR. O'REILLY: I mean, it won't have any
6 impact because the rear of the house is all wooded.
7 You cannot see the houses on Appleton Street from the
8 rear of our house.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. O'REILLY: And there is no alley, and
11 the houses on Appleton are -- the lots on Appleton are
12 really long and the houses are on the street, so there
13 is no impact on their privacy.

14 CHAIRPERSON GRIFFIS: Understood.

15 MR. O'REILLY: The issue is the house is
16 zoned single family, and it's a duplex.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. O'REILLY: Or semidetached.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. O'REILLY: So obviously there is an
21 issue with 3713, which is only a foot away.

22 CHAIRPERSON GRIFFIS: And what is the
23 impact on that side, in your opinion?

24 MR. O'REILLY: There is no impact or
25 minimal impact. The architect has designed it so that

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1 there is privacy; there's no windows on that side.
2 The roof is flat, so there is no overhang from there.
3 It comes out 12 feet, so it's not extensive. There is
4 a six-foot privacy fence. Due to the grading and the
5 contours of the land, 3713 is at least another two
6 feet lower than 3715, so you have about an eight-foot
7 fence in effect if you are standing on that lot.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. O'REILLY: The addition in and of
10 itself is going to be less than 20 feet high. As far
11 as the sun, the addition faces north, and as a result,
12 you know, from light, light and air, there is light
13 that comes -- morning sun comes from the East, so
14 that's not an issue. Afternoon sun is not an issue;
15 it comes right there. Late-afternoon sun has always
16 been an issue in our neighborhood. There is about a
17 60-foot tree that's less than 20 yards away from our
18 house that blocks a lot of the sunlight, direct
19 sunlight. In addition, I do a lot of landscaping.
20 It's my hobby. The sun in the winter is lower as it
21 comes in from the West, so it doesn't really have any
22 direct light, and it never has. There's still a lot
23 of diffused light, obviously, in and around all the
24 houses, but there is no late-afternoon sun.

25 CHAIRPERSON GRIFFIS: Okay. What kind of

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1 difficulty do you anticipate or do you anticipate any
2 difficulty in maintaining the existing structure and
3 the proposed new, if it's allowed to proceed, on that
4 property line, which is set back only 12 inches? How
5 are you going to get to the side there to fix the
6 fence, fix your siding, clean the gutters?

7 MR. O'REILLY: The space between the two
8 houses now -- I have a mulcher which just reaches in
9 and can pick up all the leaves and all the debris.
10 It's a vacuum. Plus a long rake. So I can keep that
11 nice and clean. And then the siding is going to be
12 stucco, it's going to be very light stucco, so that's
13 easily maintained, a light color. So I don't foresee
14 any issue in maintaining the space between the houses.
15 Never has been.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. O'REILLY: Oh. There is existing
18 space between the houses now.

19 CHAIRPERSON GRIFFIS: Right. Okay.

20 Any other quick questions? Or long ones,
21 for that matter. Yes, Ms. Miller.

22 VICE CHAIRPERSON MILLER: I just want to
23 clarify. Before DCRA issued the stop-work order on
24 the construction, did it ever occur to you that you
25 might need permits for that addition?

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1 MR. O'REILLY: I mean, honestly, I didn't
2 think about it. There were other more pressing issues
3 in my life at that point. I had hired a professional.
4 If there was an issue, I assumed the professional
5 would have said there is an issue. As I told Mr.
6 Cooke, I mean, ultimately it's my responsibility. I
7 should have checked, I didn't, and again, he was
8 fired. When I did find out, I immediately went down
9 and took care of it myself, but, you know, it was just
10 -- there was just a lot going on.

11 VICE CHAIRPERSON MILLER: Okay. My other
12 question is, it's your position that the addition has
13 no impact on the light that goes to your neighbors,
14 the Psillos?

15 MR. O'REILLY: That's correct.

16 VICE CHAIRPERSON MILLER: Because of?
17 Could you just clarify that for me?

18 MR. O'REILLY: Well, the light -- again,
19 the morning and afternoon light is not impacted at all
20 because the addition faces north and the light is
21 coming actually from her side. And then the late
22 afternoon sun has always been an issue for the
23 neighborhood. There is no full sun and never has
24 been.

25 The other thing is, over the years mildew

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1 does build up, you know, in the back of the house, and
2 you have to clean -- over the years I would clean
3 every two weeks. I even took care of my neighbor's
4 house for years until I hurt myself. I mowed her
5 yard, power-washed her walkway, her sidewalk, mulched
6 her yard. They have never cleaned off the mildew in
7 their backyard, so it's pretty pronounced there.
8 Otherwise, it should be the same.

9 VICE CHAIRPERSON MILLER: Thank you.

10 CHAIRPERSON GRIFFIS: Any other questions?

11 MR. COOKE: Yes. I would like to hear
12 from our architect now. May I?

13 CHAIRPERSON GRIFFIS: Absolutely.

14 Whereupon,

15 DAVID KACAR,
16 was called as a witness by counsel for the applicant
17 and was examined and testified as follows:

18 DIRECT EXAMINATION

19 MR. COOKE: Would you state your name and
20 occupation, sir?

21 MR. KACAR: My name is David Kacar. I'm
22 an architect registered in the District of Columbia.
23 I was hired by the O'Reillys to help them with their
24 special exception and to help guide the design of this
25 structure so that it would meet or exceed the

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1 guidelines and tests under 223. I made a number of
2 significant recommendations and suggestions that
3 ultimately the O'Reillys agreed to do.

4 MR. COOKE: And are you -- you are
5 familiar with the District of Columbia zoning
6 regulations?

7 MR. KACAR: Yes, I am.

8 MR. COOKE: And I'm going to ask you a few
9 questions about those regulations and how this project
10 may be affected by those regulations, more
11 specifically, 11 DCMR 223.2, and I would like you to
12 speak to whether or not, in your professional opinion,
13 this addition has a substantial adverse effect on the
14 adjacent property or properties.

15 MR. KACAR: I'm not sure whether, Mr.
16 Cooke, you submitted this sketch that I prepared.

17 CHAIRPERSON GRIFFIS: No, we don't have
18 that.

19 MR. COOKE: Mr. Chair, might I submit it?
20 I don't believe it --

21 CHAIRPERSON GRIFFIS: Yes, we have that.
22 No, I don't have it.

23 MR. COOKE: You don't have it?

24 CHAIRPERSON GRIFFIS: No. Does anyone
25 have that three-dimensional iso? No. We have the

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1 plans, but we don't have that one.

2 MR. COOKE: Okay.

3 CHAIRPERSON GRIFFIS: Do you have copies
4 of it?

5 MR. COOKE: I do not have multiple copies
6 of it this morning. I've got the original.

7 CHAIRPERSON GRIFFIS: That's all right.
8 Ms. Bailey, would you mind? If you would hand Ms.
9 Bailey one, we will submit that into evidence and she
10 will be so good as to make copies. I also need to
11 have copies out to the ANC and the party. So you can
12 proceed and then we will see that; is that correct?

13 MR. COOKE: Yes.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. KACAR: I think this sketch is -- this
16 is a two-scale axinometric sketch.

17 CHAIRPERSON GRIFFIS: Excellent. Does
18 that mean something to everybody?

19 MR. KACAR: It's a three-dimensional
20 sketch, two-scale --

21 CHAIRPERSON GRIFFIS: That's all right.
22 We're not going to get into the technicalities. Let's
23 move on.

24 MR. KACAR: The reason I feel this is
25 important, it pretty much shows everything in a

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1 nutshell.

2 CHAIRPERSON GRIFFIS: Okay. Do you want
3 to wait before you proceed, then?

4 MR. KACAR: It probably would be better if
5 I waited just a few minutes.

6 CHAIRPERSON GRIFFIS: Two minutes.

7 (Pause.)

8 CHAIRPERSON GRIFFIS: Everyone have
9 copies? ANC? Party? Fabulous.

10 MR. KACAR: First of all, I would just
11 like to make a brief description of the existing home.
12 It's very modest in size. There are about 725 square
13 feet per floor.

14 CHAIRPERSON GRIFFIS: 725? It's a
15 1400-square-foot building?

16 MR. KACAR: 1450 existing per floor.

17 CHAIRPERSON GRIFFIS: Fascinating.

18 MR. KACAR: The addition proposed is 210
19 feet per floor, so a total of --

20 CHAIRPERSON GRIFFIS: 210 feet. I've got
21 to cut your time off because we do it by square
22 footage. Okay.

23 MR. KACAR: We're talking about 420 square
24 feet. The house with the addition will be under 1900
25 square feet. This is very modest in a neighborhood of

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1 much larger homes.

2 CHAIRPERSON GRIFFIS: But in terms of --
3 in all seriousness, in terms of the row of these
4 semidetached houses, it's a similar size.

5 MR. KACAR: It's similar in size to all
6 nine of the duplex homes along that road.

7 CHAIRPERSON GRIFFIS: That's fine.

8 MR. KACAR: All of the existing homes, and
9 you can see by this sketch, they all had screened
10 porches on the back, and I believe they were sleeping
11 porches when they were built. All of them -- almost
12 all of them have been enclosed or conditioned at this
13 time.

14 I proposed and directed the owner to have
15 this new addition be an extension of that sleeping
16 porch. In other words, it would not have a high roof
17 line; it would be a low roof line. The addition would
18 follow the floor-to-ceiling heights of the existing
19 house. The total height of the addition is under 20
20 feet.

21 I directed the owner to not have a pitched
22 roof, to have a flat roof which would do two things:
23 one, it would help the light and air for not only the
24 attached home, attached duplex, but all the
25 surrounding. There would be more light and air

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1 available with the low sloped roof.

2 CHAIRPERSON GRIFFIS: So you're saying
3 your first design direction, of course, was to
4 minimize the massing of this.

5 MR. KACAR: I wanted to minimize the
6 massing of the addition.

7 CHAIRPERSON GRIFFIS: Okay. Understood.

8 MR. KACAR: And not to have overhangs that
9 would direct or stop light from the adjacent property.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. KACAR: The existing home or sleeping
12 porch in the back, they're all one foot off the
13 property line, so there is an existing slot. I
14 directed the owner to maintain that line, which is one
15 foot off the property line. That does not bring it
16 any closer. Most attached houses have a shared
17 property line where -- a shared attached structure.
18 This, I directed them to stay that one foot off.

19 Again, there are no overhangs, which would
20 allow light and air to the backyard and I think will
21 speak specifically to address the property to the
22 east, which is the attached duplex.

23 CHAIRPERSON GRIFFIS: Let me ask you
24 whether you're talking about the addition to -- the
25 existing home, you have indicated, and I think it's

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1 shown on the photographs, is a stucco material?

2 MR. KACAR: Yes. Yes.

3 CHAIRPERSON GRIFFIS: And the addition is
4 going to be similar.

5 MR. KACAR: I'm proposing the addition to
6 have a similar stucco finish. It could have been any
7 material in the back -- a siding -- but I wanted to
8 maintain the continuity of the existing structure and
9 the exterior finish. The exterior finish is a light
10 grey stucco, and I feel that that will be important to
11 -- it's almost a white color, and really along that
12 property line will be very reflective --

13 CHAIRPERSON GRIFFIS: The rear elevation
14 you are showing -- in the elevation you are showing
15 some sort of guardrail there. Is that a step-out
16 balcony or is that just a guardrail for a large
17 sliding --

18 MR. KACAR: That's a guardrail for the
19 large window or door.

20 CHAIRPERSON GRIFFIS: So there's nowhere
21 to step out.

22 MR. KACAR: There's nowhere to step out.

23 CHAIRPERSON GRIFFIS: I see. And is there
24 any articulation in this stucco material?

25 MR. KACAR: It does have a slight

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1 articulation, it has a slight texture to it. It's not
2 a strong texture.

3 CHAIRPERSON GRIFFIS: But there's no
4 reveals or any sort of --

5 MR. KACAR: No.

6 CHAIRPERSON GRIFFIS: And the base of this
7 is going to be a block? Is that what the line is on
8 the elevation?

9 MR. KACAR: Correct.

10 CHAIRPERSON GRIFFIS: Okay. Good.

11 Let's go to, I think -- well, go ahead.

12 MR. KACAR: In addition, one final point
13 on the light and air issue. On the first floor, there
14 was an existing wood fence which is about -- it's six
15 feet high. It comes in about seven feet because the
16 grade is higher on Mr. O'Reilly's property. I had
17 recommended him to maintain and rebuild that fence, so
18 that fence has been rebuilt along that property line.
19 So that was always there; that's about seven feet
20 high. So that does not change with regard to what was
21 there initially.

22 With regard to privacy, I could discuss
23 this axinometric sketch with regard to how it shows
24 that privacy is maintained. Obviously there are no
25 windows along that side property line facing the

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1 neighbor's property. Again, the fence is screening
2 the first floor, and I directed the owner to indeed
3 have that window or door that you just mentioned to be
4 off to the center, to not have a full width of windows
5 along there to keep their privacy as well as the
6 neighbor's privacy, keep farther away from the side
7 property line.

8 Finally, I would just like to address the
9 issue of the water flow, which it tends to be a point
10 of contention among neighbors many times. I felt it
11 was really important that this flat roof would collect
12 the water through a guttering system and take the
13 water down a downspout and take it down the driveway,
14 that there would be no increase of water flow to the
15 neighbor; in fact, this would direct the water flow.
16 Not only correct Mr. O'Reilly's problem but help
17 ensure that the water flow does not -- that the
18 addition would not impact the enjoyment of their
19 backyard by having more water, I directed Mr. O'Reilly
20 to regrade his yard so that drainage does not go from
21 the rear yard across into the neighbor's property.

22 Part of the submittal or the aerial
23 photographs show a topography on them, and --

24 MR. COOKE: You mean the submittal from
25 the Office of Planning?

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1 MR. KACAR: Yes. The natural drainage in
2 that area is across Mr. O'Reilly's property to the
3 neighbor's property.

4 CHAIRPERSON GRIFFIS: Is that why his
5 basement was flooding, or did you ascertain what that
6 problem was?

7 MR. KACAR: I think that was part of the
8 reason. The primary reason, there was a -- we ended
9 up finding a drain that went to nowhere. There was a
10 large drain that --

11 CHAIRPERSON GRIFFIS: A roof drain?

12 MR. KACAR: No. It was a large area --
13 there was an existing large areaway and a drain that
14 did not go to --

15 CHAIRPERSON GRIFFIS: Oh. I see.

16 MR. KACAR: It wasn't connected to
17 anything.

18 CHAIRPERSON GRIFFIS: I see.

19 MR. KACAR: So it was -- obviously there
20 is a large areaway, there was a drain that didn't go
21 anywhere, and there were some drainage issues. All
22 that has been corrected. All the water flows down the
23 driveway.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. COOKE: And the driveway is to the

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1 neighbor's side or away from the neighbor's side?

2 MR. KACAR: It's away from the duplex
3 neighbor's side down the driveway to the west.

4 CHAIRPERSON GRIFFIS: Okay. A couple
5 quick questions. The documents that we have
6 submitted, which are the hand-drawn documents, is this
7 what you are proposing or is this what you are
8 submitting in for permit documents?

9 MR. KACAR: No. Well, that plan will --
10 the permit plan will follow that document, yes. Those
11 are not the permit drawings, obviously.

12 CHAIRPERSON GRIFFIS: Okay. Then let me
13 just run through, just for my clarification, 223. In
14 your professional opinion, Mr. Kacar, the light and
15 air available to the neighboring properties will or
16 will not be unduly affected?

17 MR. KACAR: I believe it will not be
18 unduly affected.

19 CHAIRPERSON GRIFFIS: And the privacy and
20 enjoyment?

21 MR. KACAR: I think will not be affected.
22 I believe that's fairly clear.

23 CHAIRPERSON GRIFFIS: Have you become
24 aware of any comments in preparing this case, in
25 talking to neighbors or ANC or anything else, that

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1 would indicate that there should be some design change
2 or additional lighting or any sort of screening that
3 should be proposed? Any elements of that nature that
4 have come to your attention?

5 MR. KACAR: That has not come to my
6 attention.

7 CHAIRPERSON GRIFFIS: Okay. Good.
8 Any other questions from the Board? Mr.
9 Etherly?

10 MEMBER ETHERLY: Thank you, Mr. Chairman.
11 Very briefly, Mr. Kacar. With respect to
12 the grade change between the adjacent property and the
13 subject property, do you have a sense of kind of
14 precisely how abrupt that change is, or is it just
15 fairly gradual?

16 CHAIRPERSON GRIFFIS: You mean the new
17 grading or the existing?

18 MR. KACAR: The new grade?

19 MEMBER ETHERLY: The new grade.

20 MR. KACAR: The new grading obviously has
21 to slope at least -- there has been some hardscape
22 installed in addition to the grading, and the
23 hardscape generally has to flow at least a quarter
24 inch per foot for any kind of downpour to run off, and
25 that has been installed to those specifications.

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1 MEMBER ETHERLY: You mentioned the
2 installation of a downspout directing water runoff
3 back towards the driveway away from the adjacent
4 property. With respect to just the massing of the
5 proposed addition itself, would there be any, in your
6 opinion, any additional runoff, you know, storm water,
7 any other type of runoff that might nevertheless
8 affect the neighboring property, even taking into
9 consideration that downspout?

10 MR. KACAR: As far as I'm concerned, all
11 the water from the existing structure and the new
12 structure will be directed to the western property
13 line.

14 MEMBER ETHERLY: Okay. Thank you.
15 Thank you, Mr. Chair.

16 CHAIRPERSON GRIFFIS: Sure.

17 Other questions?

18 (No response.)

19 CHAIRPERSON GRIFFIS: Good.

20 Anything else?

21 MR. COOKE: Not at this point.

22 CHAIRPERSON GRIFFIS: Okay. Let's go to
23 cross-examination. We're going to start with the
24 party in opposition. Do you have any
25 cross-examination questions of the witness? You just

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1 need to come forward and have a seat and speak into a
2 microphone.

3 CROSS-EXAMINATION
4 OF DAVID KACAR AND PAUL O'REILLY
5 BY GEORGE PSILLOS, PARTY IN OPPOSITION

6 MR. PSILLOS: The drawing which you just
7 issued shows no windows on the side of the adjacent
8 home; yet there are windows at the side of the
9 adjacent home. You do not indicate how far the fence
10 is from the addition. The fence has been placed
11 incorrectly between the two homes --

12 CHAIRPERSON GRIFFIS: I'm sorry. I'm
13 going to interrupt you a little bit. This is your
14 opportunity to ask questions.

15 MR. PSILLOS: Yes. Why are there no
16 windows in the addition at this time?

17 MR. KACAR: There will be no windows on
18 that side of the property.

19 MR. PSILLOS: Yet there are windows today.

20 MR. KACAR: I don't believe there will be.
21 There may be something that's framed a certain way,
22 but there will be no windows along that property line.

23 CHAIRPERSON GRIFFIS: Is that your
24 question? You're looking at the mid-construction of
25 the addition and you're assuming that there is some

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1 framing there that windows are going to be placed?

2 MR. PSILLOS: Yes, there are.

3 MR. KACAR: In fact, by Building Code, no
4 windows are allowed along the property line within
5 three --

6 CHAIRPERSON GRIFFIS: Okay. So the
7 architect's testimony today is that there are no
8 windows and, in fact, if we were to approve this,
9 which is yet to be seen, we're approving documents
10 that are in front of us. There are no documents that
11 I have showing me that there is any sort of
12 fenestration on that side.

13 MR. PSILLOS: Okay.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. PSILLOS: Are you licensed in the
16 District, sir?

17 MR. KACAR: Yes, I am. I stated that I
18 was.

19 CHAIRPERSON GRIFFIS: Yes. We have that.

20 MR. PSILLOS: And you know what the Code
21 rules are for the District.

22 MR. KACAR: Yes, I do.

23 CHAIRPERSON GRIFFIS: Where are we going?

24 MR. PSILLOS: When were you hired?

25 MR. KACAR: I was hired by Mr. O'Reilly

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1 after he had the stop-work order, and I helped him
2 prepare the BZA application as I previously stated.

3 CHAIRPERSON GRIFFIS: Was that 2003?
4 Spring? Fall?

5 MR. KACAR: Sometime in January --

6 CHAIRPERSON GRIFFIS: January '04?

7 MR. KACAR: '04.

8 CHAIRPERSON GRIFFIS: Okay. Next
9 question?

10 MR. PSILLOS: In the ANC hearing, you had
11 indicated that you laid the plans for the addition --

12 MR. KACAR: No, I did not.

13 MR. PSILLOS: -- indicating that it was
14 done before the stop order had been placed.

15 MR. KACAR: I believe you're mistaken.

16 CHAIRPERSON GRIFFIS: Did you do any work
17 before the stop-work order?

18 MR. KACAR: No.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. PSILLOS: What was the intent -- I
21 understand your intent, Mr. O'Reilly, to correct some
22 water problem. It certainly went way beyond just
23 correcting water problems. What preceded that?

24 CHAIRPERSON GRIFFIS: You mean why is he
25 putting an addition on?

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1 MR. PSILLOS: Yes.

2 MR. O'REILLY: Again, as I started --

3 CHAIRPERSON GRIFFIS: Yes. We kind of
4 went through that. Is there something in his --

5 MR. PSILLOS: Well, there was an
6 indication at the ANC that there was a reason, because
7 of his wife being ill.

8 CHAIRPERSON GRIFFIS: And he said that in
9 his opening. We went through, fairly lengthily, that.
10 It actually started as a retaining wall --

11 MR. PSILLOS: There was a lot more in
12 detail at that hearing. That's why I was -- there was
13 not a lot of detail today.

14 CHAIRPERSON GRIFFIS: Right. And I don't
15 think there's a lot of real necessity to give us a lot
16 of that detail.

17 MR. PSILLOS: Okay.

18 You also indicated to my sister that you
19 are an attorney, Mr. O'Reilly.

20 MR. O'REILLY: Yes. That's correct.

21 MR. PSILLOS: Are you familiar with the
22 rules and code of the District of Columbia?

23 MR. O'REILLY: I'm not. I'm a Maryland
24 lawyer.

25 CHAIRPERSON GRIFFIS: Land use lawyer in

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1 Maryland?

2 MR. O'REILLY: No.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. O'REILLY: Right now, I'm doing -- I
5 do some litigation.

6 CHAIRPERSON GRIFFIS: That's all right.

7 What else?

8 MR. PSILLOS: Thank you. That's it.

9 CHAIRPERSON GRIFFIS: Is that it?

10 MR. PSILLOS: Yes.

11 CHAIRPERSON GRIFFIS: You might have one
12 more.

13 (Pause.)

14 MR. PSILLOS: My mother had indicated that
15 she had spoken to Mr. O'Reilly before the addition was
16 started about dirt that had been piled on the
17 backyard, which also damaged the fence. Why was that
18 water problem not corrected and why was water drained
19 into her front yard from the hole that was excavated
20 under the sitting porch?

21 CHAIRPERSON GRIFFIS: Okay. Let's cut to
22 the chase of this in terms of his question. Why was
23 there not care as has been described here for the
24 adjacent properties and securing those and properly
25 dealing with the site?

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1 MR. O'REILLY: The fence in and of itself
2 was old and falling down.

3 CHAIRPERSON GRIFFIS: Did you dump soil
4 and earth on the adjacent property?

5 MR. O'REILLY: No, I did not. The soil
6 and earth was kept on my property. In 2003 -- she's
7 talking about 2003 when we had all that rain -- there
8 was rain that went down the driveway. We tried to
9 direct it into the street. First we tried to direct
10 it into the yard so that it would filter through, and
11 then we directed it into the street to keep the water
12 from accumulating in the backyard.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. O'REILLY: And Mr. Chair, I'm not even
15 sure that fence was mine, but Mr. Kacar directed me to
16 replace it, and I did. So -- because it was there
17 when I moved in.

18 CHAIRPERSON GRIFFIS: Replace what? The
19 fence?

20 MR. O'REILLY: The fence. It was falling
21 down. I tried to maintain it. It was falling down
22 when I moved in.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. PSILLOS: And finally, you never
25 mentioned that there were -- with your neighbor that

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1 there would be an addition.

2 CHAIRPERSON GRIFFIS: Yes. Why didn't you
3 talk to the neighbor and tell them you were going to
4 do an addition?

5 MR. O'REILLY: I was more preoccupied with
6 my own personal problems, and this is -- first of all,
7 she doesn't speak to us very much. It's always "Hi"
8 and "Thank you."

9 CHAIRPERSON GRIFFIS: Right.

10 MR. O'REILLY: Her family, you know, they
11 come and they go very quickly. And, you know, at that
12 point, I mean, I was taking my wife back and forth to
13 the doctor.

14 CHAIRPERSON GRIFFIS: Right. Okay.

15 MR. O'REILLY: I mean, I -- you know.

16 CHAIRPERSON GRIFFIS: So there wasn't an
17 opportunity that you saw or took. Okay.

18 Any other questions?

19 MR. PSILLOS: No, sir.

20 CHAIRPERSON GRIFFIS: Good. Thank you
21 very much

22 Let's go to the ANC. Does the ANC have
23 any cross?

24 MS. WISS: Yes.

25 CROSS-EXAMINATION

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1 OF DAVID KACAR AND PAUL O'REILLY

2 BY CATHY WISS, ANC-3F

3 MS. WISS: Cathy Wiss for ANC-3F.

4 Mr. O'Reilly, you testified that you
5 called a contractor in to regrade your yard so that
6 you wouldn't have a water problem in your basement,
7 and he was then going to put in a retaining wall. But
8 what happened instead of that is that you actually
9 ended up digging out a full basement and putting an
10 addition on top.

11 How was digging out a whole basement --

12 MR. COOKE: Objection, only because this
13 is totally inconsistent with anything that has been
14 testified to by anybody or in the record, and it's not
15 a question.

16 CHAIRPERSON GRIFFIS: Well, it's somewhat
17 close to the testimony, but --

18 MS. WISS: It's in the record.

19 CHAIRPERSON GRIFFIS: -- isn't it just
20 asking him to restate what his testimony was?

21 MS. WISS: Excuse me?

22 CHAIRPERSON GRIFFIS: Aren't you just
23 asking him to restate again --

24 MS. WISS: Well, I'm really trying to get
25 at how was putting in a basement a means of correcting

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1 a water problem.

2 CHAIRPERSON GRIFFIS: Okay. I understand.
3 And that's a fascinating issue. Two things. First of
4 all, I'm not sure it goes directly -- I don't
5 understand how this is going to the 223 special
6 exception at this point. Why don't you help me
7 understand that?

8 MS. WISS: Well, having a basement is part
9 of what he has constructed.

10 CHAIRPERSON GRIFFIS: I know, but why does
11 that have any pertinence for us in looking at a
12 special exception or 223, to grant or deny?

13 MS. WISS: Well, we at the ANC level had
14 a lot of concerns about digging for the basement and
15 possible encroachment on the backyard of Mrs. Psillos.

16 CHAIRPERSON GRIFFIS: I'm sorry.
17 Encroachment on her backyard? What encroachment?

18 MS. WISS: Well, if you've got a one-foot
19 space --

20 CHAIRPERSON GRIFFIS: Right.

21 MS. WISS: -- and you have to put a wall
22 in it, and then when you dig for foundation, you have
23 to dig out a little bit more.

24 CHAIRPERSON GRIFFIS: Unless you dig in.

25 MS. WISS: In any event, it seemed to me

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1 --

2 CHAIRPERSON GRIFFIS: All right. I'm just
3 trying to understand. So you're saying that the
4 foundation, the footings are actually going to cross
5 the property?

6 MS. WISS: Well, this was at the ANC.
7 That gets to the 223, what our concern was under 223.
8 The question I was asking to him was how was this --

9 CHAIRPERSON GRIFFIS: Right. How do you
10 get from a retaining wall to a two-story addition.

11 MS. WISS: Yes.

12 CHAIRPERSON GRIFFIS: That's the question.

13 MS. WISS: Yes.

14 CHAIRPERSON GRIFFIS: He has already
15 testified on that. Is there a clarification you want
16 to get to with that?

17 MS. WISS: Well, I had hoped to get more
18 clarification, yes.

19 CHAIRPERSON GRIFFIS: Oh, lord.

20 Okay. Can you bring more clarification to
21 that without going through the litany of starting with
22 the retaining wall to deal with the water problems and
23 going to the basement and then talking about two decks
24 and then the addition was enclosed?

25 MR. O'REILLY: That's the progress.

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1 That's what happened.

2 CHAIRPERSON GRIFFIS: Does everyone
3 understand that on the Board? Do we need
4 clarification? Yes? No? Okay.

5 MS. WISS: Okay.

6 CHAIRPERSON GRIFFIS: Okay. Let's move
7 on.

8 MS. WISS: You talked about a 60-foot
9 tree. On whose property is that tree located?

10 MR. O'REILLY: That's on Jacqueline
11 Balou's property.

12 MS. WISS: Do you know the address?

13 MR. O'REILLY: Yes. 3719.

14 MS. WISS: Okay.

15 MR. O'REILLY: Two doors down.

16 CHAIRPERSON GRIFFIS: So it's two doors
17 down. So it's two doors -- let me see -- east is the
18 party in opposition, so we're going west.

19 MR. O'REILLY: Right. One duplex west.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. WISS: You also testified that it
22 would be easy to maintain the side of your house on
23 the 3713 side because there was a one-foot space
24 there. Right now, there are boards hanging down from
25 the roof between your two properties. Why, then, has

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1 that not been repaired?

2 MR. O'REILLY: Because I didn't cause
3 that. Ms. Psillos did.

4 MS. WISS: They are hanging off of your
5 property.

6 MR. O'REILLY: No. It's between the two
7 properties, and Ms. Psillos' contractor did it, and I
8 asked her to fix it, and then I -- my contractor told
9 her he would fix it when he was done. That never
10 happened.

11 MS. WISS: Okay.

12 CHAIRPERSON GRIFFIS: Is the reason why he
13 hasn't fixed it because he can't get access to it?

14 MR. O'REILLY: No. Everything --

15 CHAIRPERSON GRIFFIS: Okay. Next
16 question?

17 MR. O'REILLY: He was gone off the job.

18 MS. WISS: Well, how close is the fence to
19 your addition, the fence between your two properties?

20 MR. O'REILLY: It's on the property line.

21 MS. WISS: And you don't know how close it
22 is to the side of her house?

23 MR. O'REILLY: Wherever the property line
24 is. I don't know.

25 MS. WISS: Now, Mr. Kacar, you just

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1 testified that the total height of the addition would
2 be under 20 feet, but in the application the height is
3 listed as 24 feet and at the ANC you said that it
4 would be 21 feet. Why the sudden change?

5 CHAIRPERSON GRIFFIS: Or what is the
6 actual dimension?

7 MR. KACAR: The actual dimension should be
8 under 20 feet.

9 CHAIRPERSON GRIFFIS: Okay.

10 MS. WISS: Would that be measured --

11 CHAIRPERSON GRIFFIS: The actual dimension
12 --

13 MR. KACAR: There's a grade difference in
14 various spots, so --

15 CHAIRPERSON GRIFFIS: So take the grade in
16 the middle of the addition, the middle and center of
17 the addition right at grade, the adjacent grade, to
18 the top of -- you have a flat roof on it, so to the
19 roof.

20 MR. KACAR: Should be 20 feet.

21 CHAIRPERSON GRIFFIS: Exactly 20 feet?

22 MR. KACAR: Well, I mean, there is some
23 grade change.

24 CHAIRPERSON GRIFFIS: We are going to need
25 that. We're going to need it in the record. First of

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1 all, let me just step back a little bit. It is an
2 excellent question to bring up, and more importantly,
3 which is going to my initial question in terms of
4 documentation, we need to see permit documents. I
5 mean, conceivably, if we approve this today, you're
6 building this hand sketch, which is kind of difficult
7 and problematic of how do you build off a hand sketch,
8 although they are nice, but they are not permit
9 documents.

10 MR. KACAR: Correct. They are not. And
11 I guess in the initial application, I wasn't sure what
12 the exact elevation was in the back. I know there was
13 some change.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. KACAR: I just wanted to be sure I
16 wasn't asking for something that I could not deliver
17 on.

18 CHAIRPERSON GRIFFIS: That's fine.

19 MR. KACAR: I wanted to be safe.

20 CHAIRPERSON GRIFFIS: You understand what
21 I'm going for, though. If the finished grade isn't
22 there currently, give a dimension of what is proposed
23 to be the finished grade at the center of the
24 addition.

25 MR. KACAR: I would feel very safe to say

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1 that it would be no more than 21 feet.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. KACAR: Even though I believe it's
4 going to be less.

5 CHAIRPERSON GRIFFIS: But we're going to
6 get that. We're going to have a nice elevation and
7 we're going to have a dimension.

8 MR. KACAR: Exactly.

9 CHAIRPERSON GRIFFIS: Okay.

10 Next question?

11 MS. WISS: Do you know how much a
12 difference there is between the original grade and the
13 finished grade at the rear of the addition?

14 MR. KACAR: I think the rear grade is up
15 about six to eight inches along the property line, so
16 when we directed the water to flow to the west, we
17 raised it on the eastern property line. It's up about
18 eight inches, I believe.

19 MS. WISS: Now, you said that there would
20 be no overhangs. Where would the gutters then be?

21 MR. KACAR: There would be no structural
22 overhang. There would be a gutter along that property
23 line picking up any water that happened to come down.

24 MS. WISS: In other words, it would hang
25 just over the side? How would --

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1 MR. KACAR: Yes, it would.

2 MS. WISS: -- it pick up the water? Okay.

3 Was a survey conducted to make sure that
4 this addition is at least one foot from the property
5 line?

6 MR. KACAR: A final survey has not been
7 prepared, but it is -- a final survey has not been
8 prepared, but it is following the line of the one-foot
9 --

10 CHAIRPERSON GRIFFIS: So you haven't had
11 a wall check on it.

12 MR. KACAR: There has not been a wall
13 check, but there would be a wall check.

14 CHAIRPERSON GRIFFIS: And it's 12 inches
15 from the property line is where the addition starts,
16 the exterior.

17 MR. KACAR: Correct.

18 CHAIRPERSON GRIFFIS: And so you also have
19 to minus the dimension of the fence, which is on the
20 property line or splits the property line? I mean, is
21 half the fence on one side, half on the other?

22 MR. KACAR: It should be.

23 CHAIRPERSON GRIFFIS: Okay. So
24 conceivably it's six inches; is that about right?

25 MR. KACAR: It would be about eight and a

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1 half, nine inches.

2 CHAIRPERSON GRIFFIS: Wow. The wood
3 fence?

4 MR. KACAR: No. The fence is four inches,
5 three and a half inches.

6 CHAIRPERSON GRIFFIS: Right. Okay. But
7 I'm throwing in six. So three is on your side just
8 because it's probably not plumb and it wavers a little
9 bit, and so you're setting off nine inches, so only
10 have really nine inches of open space.

11 MR. KACAR: Correct.

12 CHAIRPERSON GRIFFIS: Okay.

13 MS. WISS: In doing this sketch --

14 CHAIRPERSON GRIFFIS: The axon. Go ahead.

15 MS. WISS: Yes. What depth of the
16 backyard are you showing? The Office of Planning
17 report had a question about that. What is the depth
18 from the existing or the original backyard to the --

19 CHAIRPERSON GRIFFIS: What's the distance
20 from the property line to the --

21 MS. WISS: Or property line to the
22 addition.

23 MR. KACAR: It should be what we
24 submitted: 16.38, I believe.

25 MS. WISS: Okay. Now, the Office of

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1 Planning report --

2 CHAIRPERSON GRIFFIS: You are going to let
3 them present their report, right?

4 MS. WISS: I will, but I wanted to ask him
5 a question about the windows on the rear of the
6 addition.

7 CHAIRPERSON GRIFFIS: Okay. But don't use
8 the Office of Planning's report because they didn't
9 present the Office of Planning's report. You're
10 cross-examining the testimony that you heard.

11 MS. WISS: Okay. Well, then, I will have
12 to come back to this because it has to do with exactly
13 --

14 CHAIRPERSON GRIFFIS: What is the
15 question?

16 MS. WISS: Well, the picture in their
17 report --

18 CHAIRPERSON GRIFFIS: What is the
19 question?

20 MS. WISS: My question is this: Their
21 report shows --

22 CHAIRPERSON GRIFFIS: Outside of their
23 report, what is your question? What are you getting
24 to?

25 MS. WISS: The number of windows, --

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1 CHAIRPERSON GRIFFIS: Okay. How many
2 windows do you have on the exterior?

3 MS. WISS: -- the placement of windows
4 currently in the addition --

5 CHAIRPERSON GRIFFIS: Good. It's the
6 exact point that was brought up --

7 MS. WISS: -- does not match --

8 CHAIRPERSON GRIFFIS: I got you. I
9 totally understand way ahead of you your next
10 question. Here it is. Again, this question comes up.
11 You've got construction here that's showing framing
12 and it looks like there's fenestration all over the
13 place. What is going to be built if this is approved?

14 MR. KACAR: There is fenestration that
15 should show a double window just like I have shown on
16 the axinometric sketch.

17 CHAIRPERSON GRIFFIS: Excellent. So what
18 you are submitting in your exhibits is what you are
19 proposing to build.

20 MR. KACAR: Correct.

21 CHAIRPERSON GRIFFIS: And with that permit
22 elevation that we're going to get in the back, we're
23 going to see exactly what those windows are.

24 MR. KACAR: They will be exactly like
25 that.

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1 CHAIRPERSON GRIFFIS: Okay. So there may
2 well be a difference between what is now under
3 construction and what is finally finished.

4 MR. KACAR: Most likely.

5 CHAIRPERSON GRIFFIS: Okay.

6 Is that your question?

7 MS. WISS: Yes.

8 CHAIRPERSON GRIFFIS: Indeed. See, I
9 didn't even have to talk about the Office of
10 Planning's report, did I?

11 Okay. Anything else?

12 MS. WISS: No. That's all. Thanks.

13 CHAIRPERSON GRIFFIS: Thanks, Ms. Wiss.

14 Very well. If there is nothing further --
15 follow-up questions from the Board? Any follow-up?

16 (No response.)

17 CHAIRPERSON GRIFFIS: Is there any
18 rebuttal testimony or redirect of any witnesses?

19 MR. COOKE: Just a couple of redirect
20 questions.

21 CHAIRPERSON GRIFFIS: Really? Okay. Go
22 ahead.

23 MR. COOKE: Just briefly to Mr. O'Reilly.

24 REDIRECT EXAMINATION OF

25 PAUL O'REILLY

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1 MR. COOKE: There was some discussion
2 about Mr. O'Reilly's contact with the next door
3 neighbor, and I wanted to ask Mr. O'Reilly if he had
4 had any conversations with other neighbors in the
5 neighborhood about this addition.

6 MR. O'REILLY: Yes. I had several.

7 MR. COOKE: And can you identify neighbors
8 in the neighborhood who are in support or who believe
9 this is a project --

10 CHAIRPERSON GRIFFIS: Outside of those
11 that have submitted letters?

12 MR. COOKE: That have submitted letters.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. COOKE: We submitted letters I believe
15 from four neighbors on the north side of Albemarle
16 Street.

17 CHAIRPERSON GRIFFIS: Okay. Are there
18 others that you talked to that are in support as far
19 as you are aware that you want to testify to that
20 didn't submit letters?

21 MR. O'REILLY: Those are the ones that
22 submitted letters.

23 CHAIRPERSON GRIFFIS: Okay. Is the
24 adjacent neighbor on the west one of those signatures
25 on the letters that were submitted?

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1 MR. O'REILLY: Correct.

2 CHAIRPERSON GRIFFIS: Okay.

3 Questions? Ms. Miller?

4 VICE CHAIRPERSON MILLER: When did you
5 have discussions with other neighbors? Before the
6 construction or afterwards?

7 MR. O'REILLY: Well, the one immediate to
8 the west, before. I told her that, when I started
9 out, I was going to do regrading and the retaining
10 wall and then how the water was going to go down. I
11 spoke to her because it was going down along her
12 property and I wanted to make sure she, you know, she
13 wasn't worried about it. She would speak to me
14 regularly, and she asked about the fence as well
15 because she was -- that fence on her side was also old
16 and I just said I would do something about that and I
17 replaced it along that side as well.

18 VICE CHAIRPERSON MILLER: But what about
19 the addition? Did you discuss with her about the
20 addition or just the regarding?

21 MR. O'REILLY: Well, when the contractor
22 started with the addition, she said, you know, that
23 looks nice, and, you know, that was it.

24 VICE CHAIRPERSON MILLER: Thank you.

25 CHAIRPERSON GRIFFIS: Anything else?

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1 (No response.)

2 CHAIRPERSON GRIFFIS: Good. Anything
3 else?

4 MR. COOKE: Nothing else.

5 CHAIRPERSON GRIFFIS: That's it?

6 MR. COOKE: That's it.

7 CHAIRPERSON GRIFFIS: Excellent. Let's
8 move on to the Office of Planning's report. Mr.
9 Fondersmith, a very good morning to you.

10 REPORT FROM THE OFFICE OF PLANNING

11 BY JOHN FONDERSMITH

12 MR. FONDERSMITH: Good morning, Mr.
13 Chairman, members of the Board. I am John Fondersmith
14 to present the Office of Planning report.

15 I believe you have gotten a pretty good
16 picture of this site and what is being proposed. I
17 would just like, therefore, to highlight a few things
18 in our report.

19 We did mention the advertising issue, but
20 I don't think that's a major concern. It was
21 advertised as a row dwelling. And then there was some
22 question initially about this small space on the east
23 side of the house, which, of course, is common to all
24 five groups of these semidetached, and it was
25 determined, as advertised, that that needs to be a

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1 side yard relief.

2 I did want to mention, on page 3 of our
3 report, we used the lot occupancy numbers that were
4 calculated in the report, and, in fact, because of the
5 provision in the Zoning Regulations that a narrow
6 space like that counts as building area, the lot
7 occupancy numbers would be slightly higher. Instead
8 of 35 percent existing, it would be 35.7, and instead
9 of 45 percent with the extension, it would be 46.6.
10 So that I don't think affects the key issues in this
11 case, but I just did want to make sure that was clear.

12 CHAIRPERSON GRIFFIS: Good. In your
13 analysis, does that remove it from falling under a 223
14 special exception for lot occupancy?

15 MR. FONDERSMITH: No, it doesn't. It does
16 not.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. FONDERSMITH: We did describe the
19 neighborhood and this I'm not sure totally unique but
20 somewhat unique row of semidetached dwellings in the
21 R-1-B District, and we did note that, of course,
22 across the street, the south side of Albemarle, is an
23 area that's zoned R-2.

24 One of the things that comes in on this
25 case is the relatively small size of these lots, and

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1 I think you can see that in the attachments in our
2 report. Mr. Chairman, we did run out, if this would
3 be helpful, we ran out copies of Attachment 2 but
4 added the lot lines on there, and we have those if you
5 think that would be helpful in this. I think it might
6 be just to visualize the --

7 CHAIRPERSON GRIFFIS: You can put it in
8 the record. I think it's fairly self-evident when you
9 look at that and the aerial and also in terms of the
10 site plan that was submitted by the applicant.

11 MR. FONDERSMITH: Yes, I think it is.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. FONDERSMITH: And while there has been
14 some discussion of how this was designed, we, of
15 course, see this as a major -- or as an addition
16 regardless of the heating and ventilation that's
17 added.

18 Then we got into our analysis and we
19 really looked at this in terms of all different
20 directions. We looked at the single-family
21 semidetached dwelling to the west, 3717. We don't
22 think the addition, because of the size of the two
23 side yards and the existing window pattern, we don't
24 believe there would be an adverse effect, a
25 substantial adverse effect on that relationship.

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1 In terms of the relationship of the
2 proposed addition to the single-family detached
3 dwellings to the north -- that is on Appleton Street
4 -- we don't think there is a significant adverse
5 effect. In fact, it would be very limited. That is
6 because of the longer lot size of the houses facing on
7 Appleton Street and the change in elevation and also
8 considerable trees and vegetation in there.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. FONDERSMITH: That is well screened.

11 We did note that on the site visit, we
12 simply measured, and very casually, I guess, with the
13 tape measure, the rear yard, and for reasons that I'm
14 just not really clear on, the measurement to the fence
15 was about 21 feet rather than the 16.38 that is shown.
16 Now, in fact --

17 CHAIRPERSON GRIFFIS: Well, don't tell the
18 rear neighbors. They just got more extra --

19 MR. FONDERSMITH: Well, they may have the
20 fence in the wrong place; there may be some problem
21 with the other measurements. I don't know what that
22 is.

23 CHAIRPERSON GRIFFIS: Okay. What you're
24 saying is we should rely on the plat plan that was
25 issued in Exhibit Number 2, which shows a dimension of

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1 16.38 feet?

2 MR. FONDERSMITH: Well, what I'm saying in
3 effect is trying to be clear on that -- and the
4 applicant said they would get a survey and I
5 understand they have not been able to arrange that --
6 that that is a slight difference, but it doesn't
7 really affect the main issue that much. It would
8 reduce if -- if, in fact, something is off; it's not
9 just the fence -- it would mean that they were not
10 intruding into the backyard as much as they have
11 indicated on their plan.

12 CHAIRPERSON GRIFFIS: But would there be
13 any -- let's take this very quickly, but say it comes
14 in less than what it is physically showing in
15 existence today. The fence has to move back let's say
16 three feet, four feet towards the addition. Is there
17 a potential that there is development that's going to
18 happen on the adjacent rear property that would then
19 have impact, or how would that impact in terms of
20 light and air?

21 MR. FONDERSMITH: I do not think there
22 would be an impact.

23 CHAIRPERSON GRIFFIS: I see.

24 MR. FONDERSMITH: We were just trying to
25 understand the actual situation.

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1 CHAIRPERSON GRIFFIS: Indeed.

2 MR. FONDERSMITH: Clearly, as we have said
3 before, the main issue here, and it has come up this
4 morning, is the relationship of the proposed addition
5 to the adjacent single-family semidetached house to
6 the east, 3713, and we, you know, we think there are
7 some issues. I mean, obviously it's coming out.
8 There are 12 feet; it's a change from the status quo.

9 As shown, there would not be a privacy
10 problem in terms of someone in the addition looking
11 over into the yard. There are no windows right there
12 on that side. We think there would be some effect on
13 the light reaching the back of the adjacent one, the
14 back of the adjacent dwelling, especially in the late
15 afternoon. Now, just how much that is, of course, is
16 somewhat difficult to say, but we did conclude that it
17 would not be a substantial impact and that the
18 addition could be allowed.

19 Then we looked at the impact of the
20 addition as viewed from the street or alley, other
21 public way, and in fact because there is no east-west
22 alley here, the only view really that we're talking
23 about is the view from the street, and we've got a
24 couple photographs in our report of the street
25 frontage. It is, I think, kind of an interesting,

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1 handsome frontage there, and we do not believe that
2 this addition would have substantial effect on the
3 view from the street.

4 CHAIRPERSON GRIFFIS: Excellent. Anything
5 else?

6 MR. FONDERSMITH: I think that's about it.
7 We do not believe that additional screening is needed.
8 There are the fences that are there.

9 CHAIRPERSON GRIFFIS: Were you provided
10 information on where exterior lighting was going to be
11 or anything of that nature?

12 MR. FONDERSMITH: We were not.

13 CHAIRPERSON GRIFFIS: Okay. That's fine.
14 I think we will get into that very briefly.

15 MR. FONDERSMITH: So, Mr. Chairman, that
16 concludes our report.

17 CHAIRPERSON GRIFFIS: Good.

18 Questions from the Board? Ms. Miller?

19 VICE CHAIRPERSON MILLER: I'm a little bit
20 vague about OP's conclusion that there won't be a
21 substantial impact on the light of 3713 Albemarle
22 Street. Can you say how you came to that conclusion?
23 Because in your report, you say there is some effect,
24 but you don't think there is enough to rise to the
25 level of an adverse impact, and I just don't see --

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1 how did you get there?

2 MR. FONDERSMITH: We simply, of course, on
3 the site visit and on the other information we had,
4 looked at the plan, looked at the situation, and of
5 course you have to try to visualize how it would be
6 because it's a one-story thing. I think it's clear,
7 however, that there would be, since this is a
8 semidetached dwelling, they are side by side, that
9 there would be some effect from that addition going
10 out there. We did not think it would be a substantial
11 effect.

12 VICE CHAIRPERSON MILLER: There is some
13 construction already completed. Did you see an impact
14 from that?

15 CHAIRPERSON GRIFFIS: That's what you mean
16 by describing it as a one-story structure right now;
17 is that correct?

18 MR. FONDERSMITH: Yes. Yes.

19 CHAIRPERSON GRIFFIS: So you're talking
20 about you went out, you looked at it, you tried to
21 visualize the existing situation, and then you also
22 tried to visualize the proposed situation.

23 MR. FONDERSMITH: That's right. If you
24 look at the photographs in our report, and I think
25 there are also, of course, photographs in the record

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1 from the ANC and from the applicant, you see what is
2 there now, this first story of what is proposed to be
3 a two-story structure, and, I mean, it does come out
4 12 feet beyond the adjacent dwelling, so, I mean,
5 there's going to be some impact in the late afternoon.

6 Now, there has been testimony that at
7 least some times of the year, you don't -- you've got
8 vegetation there anyway. But there is going to be
9 some impact.

10 CHAIRPERSON GRIFFIS: So clearly with the
11 mass that's sitting there, the light is going to be
12 impacted, and your point is it doesn't rise to a level
13 of what you find an undue effect or an adverse impact
14 on the adjacent neighbors based on the sun pattern,
15 based on the vegetation, based on the setback.

16 MR. FONDERSMITH: That's right.

17 CHAIRPERSON GRIFFIS: Okay. Anything
18 else?

19 VICE CHAIRPERSON MILLER: One other area
20 I just wanted to explore with you, and that is the
21 addition is somewhat visible from the street; is that
22 correct?

23 MR. FONDERSMITH: Well, yes. If you look
24 at View 4 in particular in our report --

25 CHAIRPERSON GRIFFIS: So looking up the

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1 driveway area, you're going to be able to see this at
2 some point.

3 MR. FONDERSMITH: If, in effect, you were
4 looking for it, you would see it.

5 CHAIRPERSON GRIFFIS: What you're saying,
6 Mr. Fondersmith, is your understanding in reading the
7 documents is it out of character?

8 MR. FONDERSMITH: We do not think it's out
9 of character.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. FONDERSMITH: In other words, if you
12 look at the street frontage --

13 VICE CHAIRPERSON MILLER: Okay. Why don't
14 you think it's out of character if it's different from
15 the other houses in that row?

16 MR. FONDERSMITH: Because this part of 223
17 is really dealing with the impact on the street
18 frontage or possibly from an alley or some other
19 vantage point. It pretty clearly is not, as you walk
20 down the street, drive down the street, it is not
21 going to be a major presence on that street. You will
22 --

23 CHAIRPERSON GRIFFIS: Does it stay within
24 the lines of the massing? Is it taller? It stays on
25 it in terms of the height; is that correct?

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1 MR. FONDERSMITH: It's a line, it's
2 essentially at the extension of the existing what we
3 refer to as the sun porches, which have all been
4 enclosed.

5 CHAIRPERSON GRIFFIS: Enclosed. So in
6 terms of height, in terms of massing, in terms of
7 setting, in terms of material, it is similar to the
8 existing building, and therefore you are saying it
9 fits in the character architecturally.

10 MR. FONDERSMITH: That's right.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. FONDERSMITH: And it is not going to
13 be noticeable per se.

14 CHAIRPERSON GRIFFIS: Okay.

15 VICE CHAIRPERSON MILLER: Thank you.

16 CHAIRPERSON GRIFFIS: Anything else from
17 the Board?

18 (No response.)

19 CHAIRPERSON GRIFFIS: Does the applicant
20 have any questions, examination for the Office of
21 Planning? Any questions?

22 MR. COOKE: No, Mr. Chair.

23 CHAIRPERSON GRIFFIS: Party in opposition?
24 You are going to need to be at the table.

25 CROSS-EXAMINATION OF JOHN FONDERSMITH

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1 BY GEORGE PSILLOS, PARTY IN OPPOSITION

2 MR. PSILLOS: Have you had a chance to
3 take a look at this structure from inside of 3713
4 Albemarle Street, the adjacent property?

5 MR. FONDERSMITH: I did not. I made the
6 site visit, of course was in the backyard, was able to
7 see the adjacent yard and so on, but I did not come
8 around to your mother's yard and look that way.

9 MR. PSILLOS: Thank you.

10 CHAIRPERSON GRIFFIS: Did you get onto
11 that property? All your site visits happen on the
12 property, the applicant's property.

13 MR. FONDERSMITH: That's right.

14 CHAIRPERSON GRIFFIS: Right. Which is
15 actually appropriate. Okay. Good question, though.

16 ANC have any cross?

17 CROSS-EXAMINATION OF JOHN FONDERSMITH

18 BY CATHY WISS, ANC-3F

19 MS. WISS: That last question leads me to
20 questions I had. Did you talk with any of the
21 adjacent property owners when you wrote your report?

22 MR. FONDERSMITH: I did not.

23 MS. WISS: Now, you said there would not
24 be a privacy problem. What would prevent someone from
25 putting in windows at a later date?

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1 MR. COOKE: Objection.

2 CHAIRPERSON GRIFFIS: What is the
3 objection?

4 MR. COOKE: She's asking what is possible.
5 Lots of things are possible. What we try to talk
6 about is --

7 CHAIRPERSON GRIFFIS: Okay. That's a
8 hypothetical that Office of Planning actually can't
9 answer. I tend to somewhat agree, but, Mr.
10 Fondersmith, I want you to answer anyway. I mean,
11 you're assuming privacy is protected because no
12 fenestration is showing now. What stops them from
13 putting a window in later?

14 MR. FONDERSMITH: Well, I would think that
15 one of the things that might be done in a case like
16 this, if the Board decided to approve this or similar
17 case, would be to make that clear, that they are not
18 --

19 CHAIRPERSON GRIFFIS: So one safeguard, in
20 your opinion, is that the Board can condition that no
21 fenestration would happen on that side.

22 Also, Ms. Wiss, I think the architect
23 testified -- you can correct me if I'm wrong -- that
24 the Building Code wouldn't allow him to put a
25 fenestration that close to the property line. Is that

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1 correct?

2 MR. COOKE: That's correct. That's what
3 he testified to, Mr. Chair.

4 CHAIRPERSON GRIFFIS: Okay.

5 MS. WISS: Okay.

6 CHAIRPERSON GRIFFIS: I don't know if
7 that's correct or not, but that was the testimony.

8 MS. WISS: Right.

9 CHAIRPERSON GRIFFIS: Okay.

10 MS. WISS: I wanted to get Mr.
11 Fondersmith's viewpoint.

12 CHAIRPERSON GRIFFIS: Good.

13 MS. WISS: Now, let's suppose this home
14 was in an R-2 District.

15 CHAIRPERSON GRIFFIS: Oh, dear. Why?

16 MS. WISS: Because it's a semidetached
17 house.

18 CHAIRPERSON GRIFFIS: Okay. So?

19 MS. WISS: Could an addition be built this
20 close to the property line in an R-2 District?

21 MR. COOKE: Mr. Chair, I would only point
22 out that that's not this case.

23 CHAIRPERSON GRIFFIS: Right. It isn't.
24 It's a strange hypothetical, actually. I'm not sure
25 what you're asking. Could this come in under 223 if

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1 it were in an R-2 zone?

2 MS. WISS: Right. Well, basically --

3 CHAIRPERSON GRIFFIS: Mr. Fondersmith,
4 could this come in under 223 in an R-2 zone?

5 MR. FONDERSMITH: It could, and gets into
6 the sideyard issue.

7 CHAIRPERSON GRIFFIS: Right, it does, it
8 gets in the side yard issue, as the Board is all too
9 well familiar with. Okay.

10 MS. WISS: Okay. That's all.

11 CHAIRPERSON GRIFFIS: You're sure?

12 MS. WISS: Yes.

13 CHAIRPERSON GRIFFIS: Okay. Excellent.
14 Where are we? Well, we have been through your case
15 presentation anyway. Okay. Let's go quickly on.
16 We're at 11 o'clock. We're going run out of time on
17 this pretty quickly because we have other cases to do,
18 and this sets a new record of the wrong direction we
19 go with in 223s, being one of the longest now. So
20 let's go. Is the ANC ready to present their case?

21 MS. WISS: Yes.

22 CHAIRPERSON GRIFFIS: Excellent. Why
23 don't we give her the table, make yourselves
24 comfortable. When we get to the ANC, Ms. Wiss, if you
25 wouldn't mind -- do you need a minute to set up?

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1 MS. WISS: It just takes me a little
2 longer to walk around.

3 CHAIRPERSON GRIFFIS: Why don't we get
4 someone to help you?

5 (Pause.)

6 CHAIRPERSON GRIFFIS: Whenever you are
7 ready.

8 TESTIMONY BY CATHY WISS, ANC-3F

9 MS. WISS: Good morning. My name is Cathy
10 Wiss and I represent ANC-3F06 where the subject
11 property is located.

12 When Mr. O'Reilly first contacted me about
13 this case, he left me with the impression that he was
14 seeking a special exception to correct a minor
15 technicality occasioned by the incorporation of this
16 row of semidetached houses into an R-1-B zone. When
17 the ANC later received the application, other
18 commissioners and I were surprised at the extent of
19 relief being sought: three special exceptions, lot
20 occupancy, rear yard setback, and side yard setback.

21 This addition would not be possible as a
22 matter of right even in an R-2 zone. In fact, the
23 zoning regulations do not allow a one-foot side yard
24 in any zoned district, either residential or
25 commercial, where a side yard is provided.

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1 CHAIRPERSON GRIFFIS: Isn't that why they
2 would want relief?

3 MS. WISS: Yes.

4 CHAIRPERSON GRIFFIS: I mean, they are
5 saying you are not allowed to have a one-foot side
6 yard, and that's why you come for relief.

7 MS. WISS: Thinking of this as a gradation
8 of increasing density, even in commercial zones that
9 are highly dense, if a side yard is provided -- in
10 other words, if they don't have a common division
11 wall, they have --

12 CHAIRPERSON GRIFFIS: I understand how you
13 provide a side yard. But you're precluding them from
14 coming in for relief on your logic. Your theory is,
15 look, you have to provide a side yard. Side yards are
16 important. You only have a one-foot side yard. So
17 therefore you can't come in for relief. I mean,
18 actually it's an old argument that we hear over and
19 over again: Because you need relief, you can't be
20 here for relief.

21 MS. WISS: Well, I think there is a
22 difference. Let's say he was asking, you know, for a
23 five-foot side yard or a four-foot side-yard --

24 CHAIRPERSON GRIFFIS: So you're saying the
25 amount of relief --

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1 MS. WISS: A one-foot side yard is, I
2 think --

3 CHAIRPERSON GRIFFIS: So what do we do
4 with the existing condition?

5 MS. WISS: Well, as we get further down
6 the testimony, and maybe I should skirt down to there,
7 the existing condition -- I was very interested in
8 what the Office of Planning said about this one-foot
9 space, and the Office of Planning called it more like
10 a court. But if you look at Views 2 and 3 on page 7
11 of the OP report, you will see that the space does not
12 meet the test for either a court, open or closed, or
13 for a side yard because it is not open to the sky. If
14 anything, this small space would have to be a court
15 niche, although it does not meet the standards for
16 that. A court niche is an architectural embellishment
17 from which can be derived no right --

18 CHAIRPERSON GRIFFIS: Right. We know what
19 a court niche is.

20 MS. WISS: Okay.

21 CHAIRPERSON GRIFFIS: Okay.

22 MS. WISS: I guess we have generally heard
23 testimony about why Mr. O'Reilly said he was building
24 his addition and that this will be enclosed and not
25 just a porch, and ANC-3F notes that the OP report

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1 correctly states that an addition is an addition
2 whether they are used for porches or living rooms or
3 whatever. The standards for Section 403 and 404
4 relate to structures. The side yard requirements of
5 Section 405 apply to buildings. The addition is both
6 a structure and a building as defined in Section --

7 CHAIRPERSON GRIFFIS: Right. I don't
8 think there is any disagreement from the Board.

9 MS. WISS: Okay. We also had a question
10 about the basement that was dug. It's not really
11 highlighted in the application, but the drawing does
12 show that there is one, and everything we have heard
13 was there was a large hole dug in the backyard to put
14 one in, and Mr. O'Reilly finally did admit that there
15 was one.

16 Commissioners questioned Mr. O'Reilly
17 whether he intended to rent the basement as an
18 accessory apartment. It brought to us the question
19 that maybe there is a hidden special exception in
20 here. Mr. O'Reilly did say that he plans to use his
21 large new basement for storage.

22 CHAIRPERSON GRIFFIS: Are you thinking
23 that has some bearing on our proceedings today?

24 MS. WISS: Just to flag it for you. There
25 is a possibility that this could at some point be used

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1 as that sort of special exception.

2 CHAIRPERSON GRIFFIS: Special exception
3 for what?

4 MS. WISS: For an accessory apartment in
5 the basement.

6 CHAIRPERSON GRIFFIS: Okay.

7 MS. WISS: Actually, many people in the
8 neighborhood do have basement apartments.

9 CHAIRPERSON GRIFFIS: Indeed.

10 MS. WISS: Whether they come to this Board
11 or not is a question.

12 CHAIRPERSON GRIFFIS: We have a whole new
13 task force going after them; I'm leading it.

14 MS. WISS: You've got your work cut out
15 for you.

16 CHAIRPERSON GRIFFIS: Yes. That's a bad
17 sense of humor. There is no task force and I won't be
18 involved. Okay. Let's go ahead.

19 MS. WISS: Okay. Commissioners were
20 concerned about two possible encroachments on the
21 property at 3713 Albemarle from the excavation of the
22 foundation itself. Mr. Kacar did assure the ANC that
23 there has been no encroachment, but we don't have
24 evidence of a survey done prior to construction to
25 locate the property line to prevent this.

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1 One-foot offset from the property line
2 does not give much space for air. Also, commissioners
3 were worried about debris and water falling off the
4 roof. Let's say the gutters, which do extend a few
5 inches out from the building, get blocked and icicles
6 form; they could easily fall into her property, into
7 Ms. Psillos' property.

8 We talked a bit about the backyard being
9 possibly 20 feet. In my investigation of the case, I
10 found that several fences in the area are not on the
11 property lines; they appear to delineate. The old
12 chain link fence running across most of the rear yards
13 of this row of duplexes is not straight but seems to
14 have been angled to the northwest.

15 CHAIRPERSON GRIFFIS: Do you differentiate
16 -- or do you contest the plan that is submitted that
17 this rear yard is --

18 MS. WISS: I don't contest the plan that
19 was submitted with the application. I just am trying
20 to explain why Mr. Fondersmith could have measured
21 something 20 feet and in --

22 CHAIRPERSON GRIFFIS: You can take that up
23 with him after.

24 MS. WISS: -- Ms. Psillos' yard --

25 CHAIRPERSON GRIFFIS: I understand.

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1 MS. WISS: -- it measures 19 close to the
2 addition, so on, so forth.

3 CHAIRPERSON GRIFFIS: I have a firm
4 understanding of the backyard situation here.

5 MS. WISS: Okay. In addition, there is a
6 fence at the rear of 3717 Albemarle and part of 3715
7 Albemarle that is actually way up --

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. WISS: It's on the --

10 CHAIRPERSON GRIFFIS: These fences are
11 going all over the place.

12 MS. WISS: The fences are going all over
13 the place --

14 CHAIRPERSON GRIFFIS: It's frankly chaos
15 over there.

16 MS. WISS: -- and part of the backyard of
17 --

18 CHAIRPERSON GRIFFIS: But how does that --

19 MS. WISS: -- 3724 Appleton is there --

20 CHAIRPERSON GRIFFIS: Listen to me,
21 please.

22 MS. WISS: Yes.

23 CHAIRPERSON GRIFFIS: How does that have
24 anything to do with what we're looking at today? Show
25 me the impact that you're trying to evidence here.

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1 MS. WISS: Okay. I was just trying to
2 explain an issue that was raised by the OP report.

3 CHAIRPERSON GRIFFIS: And I understand
4 that. We've got it. Done.

5 MS. WISS: So we've got a lot of
6 encroachments and funny fences and so on.

7 We had some discussion earlier about the
8 placement of the fence between the O'Reillys and Mrs.
9 Psillos. I measured it and I provided you with a
10 picture. From Mrs. Psillos' house, it's only five and
11 a half feet from the side of her house.

12 CHAIRPERSON GRIFFIS: Or inches. Five and
13 a half inches.

14 MS. WISS: Five and a half inches. I'm
15 sorry.

16 CHAIRPERSON GRIFFIS: Okay.

17 MS. WISS: The center between the two
18 houses is somewhere on the other side of that fence.
19 So this fence --

20 CHAIRPERSON GRIFFIS: Oh, so you're saying
21 that the fence is not sitting directly on the property
22 line.

23 MS. WISS: It's not sitting on the
24 property line. It's wholly on the property of Mrs.
25 Psillos.

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1 CHAIRPERSON GRIFFIS: So it's her fence.

2 MS. WISS: So that it's on her lot.

3 CHAIRPERSON GRIFFIS: Okay.

4 MS. WISS: It was replaced by Mr.

5 O'Reilly, but it's on her lot.

6 CHAIRPERSON GRIFFIS: That's clear in your
7 testimony.

8 MS. WISS: Okay.

9 CHAIRPERSON GRIFFIS: What are we supposed
10 to do with that? What's the impact here?

11 MS. WISS: Well, the impact is that
12 actually it does allow, say, Mr. O'Reilly some room to
13 maneuver between this addition and the fence.

14 CHAIRPERSON GRIFFIS: Okay. So it's more
15 supportive of the application.

16 MS. WISS: It doesn't allow Mrs. Psillos
17 much room because --

18 CHAIRPERSON GRIFFIS: But it's her fence,
19 it's on her property, you're testifying. Why does
20 that have anything to do with this addition?

21 MS. WISS: Well, you need to -- the
22 Psillos may talk about this a little bit.

23 CHAIRPERSON GRIFFIS: I know, but I'm
24 asking you. You brought it up, you photographed it.
25 You're saying that it's five and a half inches on the

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1 adjacent property. How is that at all connected with
2 this addition?

3 MS. WISS: The connection is that by
4 putting this fence, which Mr. O'Reilly put up, on her
5 property, it does give him more room to use his
6 addition, but it does put the fence on her property.

7 CHAIRPERSON GRIFFIS: I see. Okay.

8 MS. WISS: Okay. I mean, he had to have
9 allowed at least one foot in order to be able to get
10 around his addition.

11 CHAIRPERSON GRIFFIS: Okay.

12 MS. WISS: Okay. As part of my
13 investigation in this case, I interviewed all the
14 property owners adjacent to 3715 as well as one
15 property owner farther down the row of duplexes. Mary
16 Toms of 3717 Albemarle Street said that Mr. O'Reilly
17 had talked with her about the addition and that she
18 understood that the O'Reillys were building it because
19 of Mrs. O'Reilly's illness. At that point, she cut
20 off the conversation.

21 I should note that Ms. Toms is in the
22 process of selling her house, so that she would not be
23 affected by the decision of this Board.

24 I next tried to reach Mrs. Emilia Psillos
25 of 3713 Albemarle. She hung up on me, saying she does

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1 not speak English. Fortunately, a neighbor gave me
2 contact information for her children, who do speak
3 English. They stated she has been devastated by the
4 addition. It was her son who, with a great deal of
5 effort, got DCRA to inspect the construction. This
6 inspection led to the stop-work order.

7 Before the addition was started, Mrs.
8 Psillos enjoyed spending time on her patio and
9 planting flowers and vegetables. She enjoyed views of
10 trees and could see the sky in all directions. Now,
11 as the picture attached to the ANC resolution shows,
12 the addition looms over her patio and extends almost
13 half the depth of her backyard. It has blocked views
14 of the trees that Mr. O'Reilly spoke of, and sunsets.

15 If you place a paper alongside the outside
16 wall of the picture in the ANC resolution, you get a
17 sense of how much more overwhelming the addition would
18 be and how much more would be loss to Mrs. Psillos if
19 a second floor were added.

20 With a second floor, the addition would be
21 almost as high as the width of her backyard. Because
22 the backyards are on the north side of the houses, the
23 addition would put her backyard in shadow from midday
24 on.

25 Already with only one story, the flowers

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1 and vegetables are harder to grow in the diminished
2 sunlight, but mildew thrives and now covers her patio
3 and steps. Mrs. Psillos is afraid to go outside lest
4 she slip and fall in the mildew.

5 Also, the prevailing summer breezes in our
6 area come from the southwest. The addition is
7 positioned so as to block these breezes. Her patio is
8 in a zone of dead air.

9 As can be seen in the photographs attached
10 to this testimony, the addition blocks views and
11 sunlight from inside Mrs. Psillos' house. She can no
12 longer see trees from her breakfast table or upstairs
13 sitting room but instead must face a wall. The only
14 form of housing where one might expect such a wall
15 next to one's windows would be an apartment building,
16 and this block is zoned R-1-B for low-density housing.

17 The construction does pose water problems
18 for Mrs. Psillos. As noted above, we were concerned
19 about water falling off the roof, but also dirt was
20 excavated from the basement and the O'Reillys elevated
21 their backyard behind the addition about two feet
22 above existing grade. Here they have built a patio.
23 I did take photographs of this, but the change in
24 elevation is hard to show.

25 CHAIRPERSON GRIFFIS: Well, what is the

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1 critical aspect that you're trying to tell us here?

2 MS. WISS: Well, first of all, this was
3 not the original elevation. It has been bermed up, so
4 it does make the addition seem somewhat shorter,
5 perhaps, as we were just testifying to.

6 CHAIRPERSON GRIFFIS: Right. You were
7 going to the water difficulty, that this is going to
8 cause problems. What are the problems?

9 MS. WISS: Well, the water difficulty is
10 there is water that drains off the patio and pools in
11 Mrs. Psillos' backyard because now it's elevated about
12 two feet above her backyard.

13 CHAIRPERSON GRIFFIS: Okay. So the new
14 patio is going to have water run into the Psillos'.

15 MS. WISS: Right.

16 CHAIRPERSON GRIFFIS: Okay.

17 MS. WISS: And you can also see it's
18 elevated above the grade of the yard, the O'Reillys'
19 yard next to their addition.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. WISS: Although not an adjacent
22 neighbor, the owner of 3711 Albemarle also believes
23 the addition projects too far into the backyard and
24 affects her views. This is a woman named Karen, and
25 I don't know if she wrote a letter to the Board or

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1 not. Her reaction, though, did not seem unreasonable
2 to us. Her backyard is only 27 feet from the addition
3 and it does stick out a full 12 feet.

4 The adjacent property owners on Appleton
5 Street also oppose the addition. The Chisholms, who
6 own 3722 Appleton, submitted a letter to the file in
7 this case. OP discounted the addition's effect on
8 them because it is far from their house. They oppose
9 an addition this close because it would affect their
10 use and enjoyment of their backyard.

11 Kay Cooke, who owns 3724 Appleton, is
12 concerned that if this addition is allowed, others
13 will seek similar special exceptions. As a result,
14 the character of the neighborhood would change. Trees
15 would be lost.

16 ANC-3F is also very concerned about the
17 precedent this case would set. Indeed, Mr. O'Reilly
18 told the ANC that others in his row would like to
19 build similar additions. If they did, the harmony and
20 balance between the houses in this row would be
21 destroyed. Those who chose not to expand would be
22 sandwiched between large extensions, just as Mrs.
23 Psillos is now.

24 ANC-3F recommends that this Board deny the
25 application, that the addition be torn down and the

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1 property be restored to its original condition.

2 Thank you.

3 CHAIRPERSON GRIFFIS: Thank you very much.
4 We appreciate you coming down and spending time to put
5 together this presentation today. But I have some
6 concerns.

7 You are very familiar -- have been before
8 us numerous times. You have thrown around these
9 monumental phrases dealing with this. First of all,
10 "in a zone of dead air," the adjacent neighbors.
11 "Trees are going to be lost." I need some facts here.
12 What trees are going to be lost? How can this be a
13 dead air in the adjacent property when I'm looking at
14 an aerial photograph and the other adjacent properties
15 are 50, 150, 250 feet away? Where is this -- just
16 saying the words doesn't do anything for me.

17 MS. WISS: Okay. These are the two houses
18 and you've got an addition here. The wind --

19 CHAIRPERSON GRIFFIS: You're saying that
20 this is going to be totally enclosed, that no air is
21 going to be able to get in there?

22 MS. WISS: Let's say this is south, this
23 is the north. This is the O'Reilly property with the
24 addition. This is the Psillos property. The winds
25 come from the southwest, they come this direction.

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1 They can't get --

2 CHAIRPERSON GRIFFIS: The southwest. You
3 mean from Albemarle Street.

4 MS. WISS: From Albemarle Street.

5 CHAIRPERSON GRIFFIS: Where the houses
6 are.

7 MS. WISS: Right.

8 CHAIRPERSON GRIFFIS: So it goes through
9 the house currently to get the air to the backyard.

10 MS. WISS: But if you don't have the
11 addition, it can come like this. If you do have the
12 addition, it goes like this and out here. So this
13 area here, the patio where Mrs. Psillos likes to spend
14 her time, doesn't get any air or breeze.

15 CHAIRPERSON GRIFFIS: Okay. Understood.

16 MS. WISS: And particularly in the
17 summertime, the breezes are light --

18 CHAIRPERSON GRIFFIS: Which is the
19 important time to have a nice breeze.

20 MS. WISS: Yes.

21 CHAIRPERSON GRIFFIS: Indeed. Okay.

22 MS. WISS: As far as the statement about
23 the trees, I was simply relating to you what the woman
24 told me.

25 CHAIRPERSON GRIFFIS: Which woman?

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1 MS. WISS: The woman who owns 3724
2 Appleton Street. She's the one that said trees would
3 be lost.

4 CHAIRPERSON GRIFFIS: She said trees are
5 going to be lost.

6 MS. WISS: Yes. That was what she said.

7 CHAIRPERSON GRIFFIS: Okay.

8 MS. WISS: She thought it would change the
9 character of the neighborhood because if you put in
10 additions, you're going to have to cut down the trees,
11 and she likes to look at the trees.

12 CHAIRPERSON GRIFFIS: I see. Okay. Did
13 you talk to her about that? Did you talk to her about
14 precedential value on a special exception application?

15 MS. WISS: I didn't say, "Well, do you
16 think this will have a precedential value?" because I
17 wanted to get her view.

18 CHAIRPERSON GRIFFIS: But she said that it
19 would.

20 MS. WISS: I said, "They are building an
21 addition. What are your views?" And she said, "Well,
22 I have seen this happen in my mother's neighborhood.
23 Somebody starts building an addition, and then
24 everybody follows suit and they cut down all the trees
25 and it changes the character of the neighborhood."

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1 CHAIRPERSON GRIFFIS: Indeed.

2 MS. WISS: That was her concern.

3 CHAIRPERSON GRIFFIS: Good. Okay.

4 Any other questions from the Board?

5 MEMBER MANN: Did you visit the site
6 during the summertime? I'm asking only because I'm
7 wondering whether or not you had any personal
8 experience with southwest breezes being diminished
9 from your site visits.

10 MS. WISS: I don't have personal
11 experience of this lot in the summertime. I have
12 personal experience of my own property, which is on
13 Albemarle Street, and I just know the effect of
14 buildings on the relatively light winds in the
15 summertime.

16 MEMBER MANN: Okay. Thank you.

17 CHAIRPERSON GRIFFIS: Ms. Miller?

18 VICE CHAIRPERSON MILLER: In your
19 resolution, you say that the addition would deprive
20 neighbors of the use and enjoyment of their backyards.
21 Are you only referring to 3713, the Psillos, or are
22 you referring to other neighbors?

23 MS. WISS: I believe that was referring to
24 statements from other neighbors. There's one
25 paragraph on the Psillos property and then the other

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1 paragraph is on the other neighbors.

2 VICE CHAIRPERSON MILLER: Where is the
3 other -- I haven't really heard about effect on other
4 neighbors, and maybe you can clarify that for me.

5 MS. WISS: I'm trying to find my
6 resolution so I can --

7 VICE CHAIRPERSON MILLER: Okay. I mean,
8 I heard you say about the possibility of trees coming
9 down, that that was a concern of a neighbor --

10 MS. WISS: That was that neighbor's
11 concern.

12 VICE CHAIRPERSON MILLER: Right. But as
13 far as affecting the other neighbors?

14 MS. WISS: It was the other people in the
15 row that felt that -- particularly the woman at 3711,
16 who said that, you know, "Gee, it really sticks out."

17 VICE CHAIRPERSON MILLER: So how does that
18 affect their use and enjoyment of their property?

19 MS. WISS: Well, you look out --

20 VICE CHAIRPERSON MILLER: The visibility
21 of it?

22 MS. WISS: -- and there's this addition.
23 Yes. You can't just look out and see the sky; you
24 look out and see an addition.

25 VICE CHAIRPERSON MILLER: Okay. Thank

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1 you.

2 CHAIRPERSON GRIFFIS: Anything else?
3 Anything else from the Board?

4 (No response.)

5 CHAIRPERSON GRIFFIS: Does the applicant
6 have cross-examination of the ANC? Any questions on
7 cross? Any cross?

8 Excellent. Thank you very much. And we
9 do have your full testimony that was in writing here
10 in the record, and it was also given to the parties
11 and the applicant.

12 Let's move on.

13 Mr. Psillos, are you ready?

14 TESTIMONY BY GEORGE PSILLOS

15 PARTY IN OPPOSITION

16 MR. PSILLOS: Mr. Chairman, members of the
17 Board, thank you for having us in front of you this
18 morning.

19 I have been a resident of the home at 3713
20 for over 25 years. I no longer live there, but I
21 visit there on a weekly basis.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. PSILLOS: My parents emigrated from
24 Greece in the mid '60s.

25 CHAIRPERSON GRIFFIS: I'll tell you what.

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1 We're going to cut to the chase.

2 MR. PSILLOS: I am, and if you don't mind,
3 I would just like to -- it will be very brief.

4 CHAIRPERSON GRIFFIS: But it has to have
5 some direct pertinence to this special exception case.

6 MR. PSILLOS: Mr. O'Reilly, as I indicated
7 earlier, never talked about an addition. For months,
8 he was pumping water into my mom's property in order
9 to empty out the hole that had been dug out for
10 several months.

11 I began calling DCRA in October 2003 when
12 my mother became very concerned about the excavation
13 next door. Several phone calls later and jumping
14 through hoops with various offices, I was able to
15 reach Inspector Letrin. He did not take action until
16 January 2004. In January 2004, a stop order was
17 issued. I was never able to reach Mr. Letrin again
18 for an update of the situation until I received the
19 call from Ms. Cathy Wiss from the Advisory
20 Neighborhood Commission 3F, who invited me to attend
21 the ANC meeting on November 15, 2004, at which time
22 the commission opposed Mr. O'Reilly's application.

23 Construction at 3715 Albemarle Street
24 continued even after issuance of the stop work order.
25 Construction was going on inside and outside, a patio

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1 was erected in the back of the addition the width of
2 the addition and about eight feet long, plus a new
3 fence. The fence currently is placed incorrectly on
4 my mom's property. Mr. O'Reilly disregarded where the
5 fence should have been placed. It now obstructs
6 access to the back side of the crawl space underneath
7 the sitting room of 3713 Albemarle Street.

8 My mother found the fence installed when
9 she arrived home from work.

10 CHAIRPERSON GRIFFIS: I'm going to
11 interrupt you just briefly. There's two things.
12 First of all -- well, maybe three things -- I don't
13 want to raise your expectations that we have any
14 jurisdiction to deal with any of the elements you just
15 talked about.

16 MR. PSILLOS: I understand.

17 CHAIRPERSON GRIFFIS: If this were an
18 appeal, perhaps somehow in the appeal this would have
19 some germane nature.

20 MR. PSILLOS: Okay.

21 CHAIRPERSON GRIFFIS: But don't believe
22 that we aren't going to take action on this.

23 Now, secondly and probably most
24 importantly, I advise you to get directly to the test
25 which they have to meet and show us how they haven't

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1 met it. Otherwise you will have spent an enjoyable
2 and enriching morning with us, but for no real
3 purpose.

4 MR. PSILLOS: Okay. I will get to the
5 point.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. PSILLOS: My mother is unable to enjoy
8 her sitting porch. She looks out the window and no
9 longer sees a line of trees to the left because they
10 are obstructed by the huge addition. Her sitting
11 porch is darker these days because the sunlight is
12 obstructed by the large addition next door. She loves
13 sitting out in the backyard of her patio, but now she
14 says she feels as though she is jailed in a corner.

15 Mold collects on the steps and patio due
16 to lack of airflow and sunlight. This is very
17 dangerous for anyone, let alone an elderly person
18 walking down four steps to a cement patio. She is
19 afraid of falling every time she has to walk out.

20 Because Mr. O'Reilly built up his yard to
21 have a higher elevation, water drains into her yard.
22 This was not the case before the addition. The
23 collecting water brings swarms of mosquitos possibly
24 carrying the Nile virus in the summer months, making
25 it impossible to be outdoors. With the addition,

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1 there are no longer crosswinds to dry the yard and
2 push away the insects.

3 My mother is emotionally sick and
4 extremely depressed over the addition next door and
5 the stress that it has brought her. The Zoning Board
6 may see these homes as single family, but they are and
7 belong in the family of townhomes. Not one home in
8 the line of these half-a-dozen duplexes extends
9 outward in front, the back, or the side; they all
10 resemble each other. They were built identically
11 inside and outside.

12 You can drive by any townhouse community
13 in our Metro area and you will not see a townhouse
14 next door to another with an addition 12 feet out and
15 less than a foot from their property line. Laws and
16 codes are created to protect our citizens. Mr.
17 O'Reilly clearly violated multiple D.C. building codes
18 with no regard to these very laws that have been put
19 in place to protect its citizens.

20 I, George Psillos, on behalf of Emilia
21 Psillos, implore that you do not approve Mr.
22 O'Reilly's appeal. Mr. O'Reilly comes to you today to
23 request an exception to continue building an oversized
24 extension that has an adverse effect, severely
25 obstructs, impairs, and violates his neighbor Emilia

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1 Psillos' property.

2 Thank you.

3 CHAIRPERSON GRIFFIS: Good. Thank you
4 very much. And I think you bring up some excellent
5 points and you reiterate a lot of what was already
6 written in the submission.

7 MR. PSILLOS: That's correct. I wanted to
8 put that on the record in verbal.

9 CHAIRPERSON GRIFFIS: Let me, just to make
10 sure that I have them all down -- of course, the
11 critical aspect is the sun that's obstructed, and that
12 creates one of several things. Of course, it has
13 created an atmosphere where mold, as you are
14 testifying, has been able to grow, which gives a
15 dangerous walking or precarious situation. You have
16 also indicated in terms of the water flow onto the
17 property and the attendant sitting and pooling water
18 and the problems that it might -- all the way up to
19 the speculation of Nile virus.

20 Do you have any indication that if
21 approved and they actually finish this addition that
22 some of those water problems might be mitigated or go
23 away?

24 MR. PSILLOS: I don't believe they will.

25 CHAIRPERSON GRIFFIS: You don't.

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1 MR. PSILLOS: No, sir, because what we
2 have today is the fact of what is actually happening.

3 CHAIRPERSON GRIFFIS: Okay. That's a good
4 clarification, an excellent point.

5 Any other questions from the Board at this
6 time?

7 VICE CHAIRPERSON MILLER: I just want to
8 get a clarification on the mold. Was there mold prior
9 to the addition?

10 MR. PSILLOS: No, ma'am, it was not at all
11 mold.

12 VICE CHAIRPERSON MILLER: Okay.

13 CHAIRPERSON GRIFFIS: Okay. If there are
14 no further questions from the Board, does the
15 applicant have any cross-examination?

16 MR. COOKE: No cross-examination.

17 CHAIRPERSON GRIFFIS: No questions? Does
18 the ANC have any cross? Excellent. Thank you very
19 much. We appreciate your being down here. And again,
20 I will reiterate the fact that we do have all this
21 also in writing and the Board will take this under
22 great advisement.

23 Very well. Are there persons -- where are
24 we? Any persons present today to give testimony in
25 support or opposition for Application 17251?

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1 (No response.)

2 CHAIRPERSON GRIFFIS: Not noting anyone
3 that lasted -- they are all out for lunch -- let's go,
4 in all seriousness, to the applicant's closing
5 summations if there are any at this time. Okay. Why
6 don't you come up? We have a little bit of rebuttal
7 testimony. Of course, that will be open to
8 cross-examination, and then we will go to any sort of
9 closing.

10 MR. COOKE: Just briefly, Mr. Chairman,
11 and hopefully we can move right to the closing, I just
12 have a few questions, have Mr. O'Reilly speak to the
13 issue of mold on the property before and after the
14 construction.

15 CHAIRPERSON GRIFFIS: Good.

16 MR. O'REILLY: Since I moved in in '94,
17 there has always been mold. The backyard faces the
18 north --

19 CHAIRPERSON GRIFFIS: On your property?

20 MR. O'REILLY: On my property, on
21 everyone's property up the road as well as Ms.
22 Psillos' property.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. O'REILLY: I clean mine every couple
25 weeks, power-wash it off to get rid of it. They have

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1 not. No one has cleaned her backyard since I last
2 cleaned it. I used to maintain her yard a lot until
3 I hurt myself, and her son knows that and so does her
4 family.

5 CHAIRPERSON GRIFFIS: Okay. So you have
6 mold.

7 MR. O'REILLY: You have to clean it off.

8 CHAIRPERSON GRIFFIS: Right.

9 MR. O'REILLY: It just happens. It has
10 always happened. And they haven't; I do.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. O'REILLY: The other neighbors do as
13 well.

14 CHAIRPERSON GRIFFIS: Excellent. Anything
15 else?

16 MR. COOKE: Nothing else.

17 CHAIRPERSON GRIFFIS: Any cross? Any
18 cross from ANC?

19 (No response.)

20 CHAIRPERSON GRIFFIS: Good. Thank you.
21 You're ready to go?

22 MR. COOKE: Yes, sir.

23 CHAIRPERSON GRIFFIS: Excellent.

24 MR. COOKE: Mr. Griffis, Board members, we
25 are here today to seek a special exemption with

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1 respect to the addition that is being built at Mr. and
2 Ms. O'Reilly's home. As was testified to, you heard
3 testimony that this is a rather small addition.
4 Notwithstanding some of the verbiage that would make
5 it appear that this was a massive structure, it's
6 going to add 400-odd square feet in total and two
7 stories to the existing structure. So the total
8 structure with the addition, if it were granted, would
9 be 1900 feet. So we're not talking about a massive
10 construction.

11 The task that Mr. O'Reilly has to
12 demonstrate is that there is no substantial adverse
13 effect on neighbors adjacent or in the neighborhood.
14 The Office of Planning's report or analysis supports
15 that. Mr. O'Reilly has demonstrated through testimony
16 today with his architect that there is no substantial
17 adverse effect with respect to the neighbors with
18 respect to light and air, privacy, causes no visual
19 intrusion. These are all corroborated by the report
20 of the Office of Planning.

21 Nothing you have heard today with respect
22 to testimony from either the next door neighbor or the
23 ANC controverts that. There are, as it will be no
24 surprise to you, differences of opinion, some of these
25 driven by the politics of neighbors and whatnot, but

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1 those things can't govern the situation. The
2 regulations clearly point to what should be the test,
3 and the test is that there has to be a substantially
4 adverse effect on light and air, substantially adverse
5 effect on privacy, substantially adverse effect on the
6 individual character of the neighborhood. Those
7 things have not been demonstrated in opposition. We
8 have demonstrated that those effects do not occur.

9 Clearly when there is a mass, there will
10 be some -- you can tell from the photographs, the
11 aerial photographs that the Office of Planning
12 included in the report, there is a substantial open
13 area involved here between the abutting properties,
14 the abutting backyards of the properties on Albemarle
15 Street and Appleton Street. There is no concrete
16 canyon being built, there is no box of dead air being
17 built as a result of this proposed addition.

18 The next door neighbor at 3717 supports --
19 endorses the project. We've got a letter of support
20 there. There are other neighbors on the north side of
21 the block of Albemarle Street that support the
22 addition as well.

23 We would argue that those are examples of
24 support, those are examples of this addition meeting
25 the requirements of Section 223, meriting a grant of

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1 the exception or exemption that would be required to
2 move forward with this project.

3 Clearly there need to be permit drawings,
4 and we are committed to providing those to this body
5 or to the Building and Land Regulation Administration
6 if this project is approved so that a very clear
7 definition of what will be built with the proper
8 elevations and whatnot will be available to you.

9 We believe that we have also addressed the
10 issue of water drainage. I think that it is clear
11 based on the professional opinion of our architect
12 that the water drainage is away from Mrs. Psillos'
13 home. To the extent that the current state of
14 construction may provide some pooling of water, some
15 drainage of water in directions that it should not go,
16 when proper gutters are installed, those problems will
17 be ameliorated or alleviated when the construction is
18 completed. But we don't believe that there has been
19 anything in the way of controverting professional
20 objective information that would argue for water being
21 directed toward Mrs. Psillos' home. In fact, it's 100
22 percent the contrary.

23 So we believe that on all counts, we have
24 made a strong case for a grant of this exception and
25 that there has not been demonstrable substantial

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1 adverse effect by either the neighbor or by Mrs.
2 Psillos at least as a neighbor or the Advisory
3 Neighborhood Commission, and we would urge this Board
4 to grant the exception.

5 CHAIRPERSON GRIFFIS: Good. Thank you
6 very much.

7 Okay. As you have indicated, we are going
8 to have submitted into the documents an elevation, and
9 on that elevation, what I want is the dimension height
10 off of the middle of the center of the addition, and
11 it may well have to -- well, it should be the finished
12 grade, and to the roof. Also indicate the property
13 lines on that drawing and indicate where the existing
14 fence is.

15 You bring up an excellent point in terms
16 of the codes, and it seems to be one of the issues
17 that has come up. Why don't we put in also a grading
18 plan? Certainly they have to know what to do, so
19 there is some plan around, whether a civil did it or
20 whoever did it. Let's have that submitted in.

21 That's all I have in my notes in terms of
22 submissions, additional documentation, unless other
23 Board members have other things that they are aware
24 of. If not, that will be it.

25 We are going to set this for

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1 decisionmaking based on a couple of things, but we are
2 running out of time today, quite frankly. We're going
3 to put this to the 4th of January. So, Ms. Bailey,
4 that being said, we have this submission document.
5 I'm going to keep the record open for limited
6 responses to this submission. Basically this is just
7 clarifying what we put in there, so I'm not
8 anticipating novels. I think the Board is very aware
9 of what they are going to be looking at, but if there
10 is anything that is brought up in terms of new
11 evidence or testimony.

12 That being said, we will keep the record
13 open for responses to this, meaning -- well, let me
14 have a timeline. How quickly can that elevation and
15 documentation, grading, be submitted? Do you need a
16 week? Two weeks? Noting if it's two weeks, we have
17 a week for responses, and then I would allow it open
18 for you to respond to the responses, we may not make
19 the 4th of January, which would set this to the first
20 week of February. So you chew on that for a minute,
21 see if we can get it in a week.

22 Ms. Bailey.

23 MS. BAILEY: Mr. Chairman, depending on
24 what the applicant's response is, is the dates that I
25 will work with.

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1 CHAIRPERSON GRIFFIS: I think I have given
2 them enough time to decide.

3 Can we have it in a week?

4 MR. COOKE: We are incentivized to provide
5 it in a week.

6 CHAIRPERSON GRIFFIS: I thought it might
7 come to that. Good. In which case we will look at
8 that coming in by three o'clock on Wednesday the
9 following.

10 MS. BAILEY: That's December 21st.

11 CHAIRPERSON GRIFFIS: Good.

12 MS. BAILEY: And then the responses would
13 be due the following week, the 28th.

14 CHAIRPERSON GRIFFIS: Good.

15 Do you want an opportunity to respond to
16 the responses? Is there a Latin phrase to cover that?
17 You went to law school.

18 MR. COOKE: Yes, there is.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. COOKE: There is a Latin phrase.

21 CHAIRPERSON GRIFFIS: There's a Latin
22 phrase for everything.

23 MR. COOKE: I don't know the Latin phrase,
24 but there is a Latin phrase.

25 CHAIRPERSON GRIFFIS: If that's the case,

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1 then, the 28th, Ms. Bailey, we're looking at -- we're
2 going to need your response in -- latest is, Ms.
3 Bailey, the Thursday before the 4th or the Wednesday
4 before the 4th? Isn't that the 28th?

5 MS. BAILEY: I'm showing the 28th, Mr.
6 Chairman, of December as a Tuesday.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. COOKE: The 28th is Tuesday, and the
9 following Tuesday is the 4th of January.

10 MS. BAILEY: Right.

11 CHAIRPERSON GRIFFIS: We're going to give
12 you two days to respond to the responses.

13 MR. COOKE: No problem.

14 CHAIRPERSON GRIFFIS: You know, I don't
15 think that's too much.

16 MR. COOKE: That's not too much. We will
17 happily accommodate it. Not a problem.

18 CHAIRPERSON GRIFFIS: I appreciate that.
19 I don't, quite frankly, anticipate that there is going
20 to be a whole lot to have put in.

21 MS. BAILEY: So the applicant's response
22 to --

23 CHAIRPERSON GRIFFIS: Three o'clock on
24 Thursday.

25 MS. BAILEY: Okay. And that will be

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1 December 30th.

2 CHAIRPERSON GRIFFIS: Good. You're going
3 to want to get it done by then anyway.

4 MR. COOKE: Yes.

5 CHAIRPERSON GRIFFIS: Okay. Good.

6 Any questions? Do you have questions of
7 procedure or what should be submitted? Okay.

8 Does the ANC?

9 Very well. In terms of the applicant, you
10 know you are serving all this. You are obviously
11 submitting into the Office of Zoning, but you are also
12 serving it on the party in opposition and the ANC.
13 I'm sure you are aware of their addresses. You might
14 want to just for clarification make sure before you
15 leave you know exactly how they want to be served and
16 where they want to be served. That way we don't have
17 any complications in that.

18 Okay. If there is nothing further in this
19 case, then we will see you all on the 4th of January,
20 or not. Of course, that is our public meeting where
21 we will decide this. No other further testimony will
22 be accepted into the record except that for which the
23 record is kept open. I appreciate --

24 MR. COOKE: So you are saying there will
25 be no testimony on the 4th.

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1 CHAIRPERSON GRIFFIS: That's exactly
2 correct. In our public meeting, we have the full
3 record before us except for what we're getting into
4 now. It will be our deliberation. You are welcome to
5 be here. You don't have to be here. There's no
6 requirement to be. You can watch us on the webcast.
7 However you want to deal with it. We welcome you
8 being here but there is no requirement to be.

9 Okay. So we will set that for the 4th and
10 we are all set with this. Thank you all very much.
11 We appreciate everyone's patience in coming down
12 today.

13 We are going to take ten minutes and then
14 call the next case in the morning, perhaps order some
15 lunch.

16 (Recess.)

17 CHAIRPERSON GRIFFIS: Very well. Let's
18 resume. Call the next case in the morning.

19 APPLICATION OF AMERIDREAM

20 AMBER OVERLOOK LLC, ET AL.

21 17252 ANC-7E

22 MS. BAILEY: Application Number 17252 of
23 AmeriDream or AmericaDream Amber Overlook and others,
24 pursuant to 11 DCMR 3104.1, for special exceptions for
25 a new residential development under Section 353 and

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1 for multiple buildings to be considered a single
2 building under Section 410, to construct a residential
3 development containing 76 row dwellings, flats, and
4 multifamily dwellings in the R-5-A District. The
5 property is located at 4922 through 4930 Call Place,
6 Southeast, 4911 through 4927 C Street, Southeast, and
7 301 through 305 50th Street, Southeast. The property
8 is also known as Square 5336, Lots 1, 27, 28, 29, 30,
9 31, 32, 33, 34, 35, and 2001 through 2015.

10 CHAIRPERSON GRIFFIS: Good. Thank you
11 very much.

12 Let's take up a preliminary matter. We
13 did get Office of Planning's report in, Exhibit Number
14 29. Is there any objection from the Board to
15 accepting it into the record?

16 (No response.)

17 CHAIRPERSON GRIFFIS: Not noting any
18 objection, we will accept it into the record.

19 Does the applicant have a copy of the
20 Office of Planning's report?

21 MR. GLASGOW: Yes, we have a copy of it.
22 We have been in contact with Mr. Moore throughout the
23 process.

24 CHAIRPERSON GRIFFIS: Okay. Excellent.
25 Let's move ahead, then. One quick clarification that

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1 you are bringing up -- it may be in your opening -- is
2 lots 2001 and 2015 and their pertinence to this
3 application?

4 MR. GLASGOW: We believe that they were
5 for condominium regime. Those are condominium unit
6 numbers.

7 CHAIRPERSON GRIFFIS: Okay. So those
8 aren't lot numbers.

9 MR. GLASGOW: Well, they are condominium
10 lot numbers. They are within either --

11 CHAIRPERSON GRIFFIS: Oh, great. So we
12 should get through this pretty quickly because that's
13 clear.

14 MR. GLASGOW: Okay.

15 CHAIRPERSON GRIFFIS: What does that mean?

16 MR. GLASGOW: All right. When you do a
17 condominium regime, let's say that you have record lot
18 50, and what will end up happening is at the Office of
19 Tax and Revenue, OTR now, what they do is when you
20 have a 100-unit condominium building, then they will
21 issue you 2000 lot numbers and you will be 2001
22 through 2100.

23 CHAIRPERSON GRIFFIS: Does it roughly run
24 with the building itself, then?

25 MR. GLASGOW: Yes.

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1 CHAIRPERSON GRIFFIS: Okay. So it's 2001
2 through 2015?

3 MR. GLASGOW: Yes.

4 CHAIRPERSON GRIFFIS: So it's 2, 3, 4, 5,
5 all those numbers all the way up to 15.

6 MR. GLASGOW: Correct.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. GLASGOW: All right. But everything
9 that is on the site right now is going to be
10 demolished and cleared away.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. GLASGOW: So we're going to be
13 starting afresh.

14 CHAIRPERSON GRIFFIS: Understood.
15 Understood. So how does it coincide with the lots,
16 the tax lots that are there now, 1, 27, 28, 29?

17 MR. GLASGOW: Well, those are all -- those
18 that you just listed are record lot numbers.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. GLASGOW: That probably superseded one
21 of the record lots.

22 CHAIRPERSON GRIFFIS: Okay. But does the
23 record lot get overridden by the condo lot or the
24 record lots --

25 MR. GLASGOW: Not for zoning purposes. So

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1 if you went to the Surveyor's Office, the record lot
2 would still be there.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. GLASGOW: And then there are
5 condominium lots that are on top of it.

6 CHAIRPERSON GRIFFIS: Right. So you could
7 conceivably be living at Square 5336, Lot 27 and Condo
8 Lot 2002.

9 MR. GLASGOW: Right, because you are going
10 to get your tax bill for your condo lot.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. GLASGOW: And it doesn't have anything
13 to do with your record lot; just sits there.

14 CHAIRPERSON GRIFFIS: Okay. Everybody
15 clear on that? Excellent.

16 MR. GLASGOW: All right.

17 Mr. Chairman, I was just going to give a
18 very brief opening statement. I think the record is
19 very complete in this case. We have the Office of
20 Planning report, we have the ANC letter, we have a
21 letter from -- the report from the School Board, we
22 have a letter from the principal of the nearby
23 elementary school, all of them in support of the
24 application. We are not aware of any opposition to
25 the application.

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1 I would just like to briefly introduce Mr.
2 Robert Newman of AmeriDream seated to my immediate
3 right; Mr. John Maisto of EDG Architects, who is the
4 architect of the project; and Mr. Steven Sher,
5 Director of Zoning and Land Use Services of Holland &
6 Knight.

7 I assume the members of the Board have
8 received a copy of the statement of the applicant.

9 CHAIRPERSON GRIFFIS: We have.

10 MR. GLASGOW: All right. And we are ready
11 for any preliminary questions that you have and then
12 proceed with the testimony of the witnesses.

13 CHAIRPERSON GRIFFIS: Good. A couple
14 quick preliminary issues here. First of all, is
15 ANC-7E represented today?

16 (No response.)

17 CHAIRPERSON GRIFFIS: Is anyone here to
18 give testimony as a person either in support or in
19 opposition?

20 (No response.)

21 CHAIRPERSON GRIFFIS: Not noting any. So
22 who else is here with you today?

23 MR. GLASGOW: The rest of our team.

24 CHAIRPERSON GRIFFIS: I see. And that
25 includes? Do you have a traffic engineer with you; is

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1 that correct?

2 MR. GLASGOW: We have one if there are any
3 questions in that area.

4 CHAIRPERSON GRIFFIS: Okay. Which is one
5 of the tests, of course, in terms of ingress and
6 egress of the site under 410, I think is what we're
7 under.

8 MR. GLASGOW: Right.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. GLASGOW: And the architect can
11 describe the ingress and egress out of the site.

12 CHAIRPERSON GRIFFIS: That's fine.

13 MR. GLASGOW: I will proffer that we don't
14 have any traffic issues down there. Level of services
15 are minimal.

16 CHAIRPERSON GRIFFIS: Right. Okay.

17 A preliminary question, then. I think
18 that's the way to go if you get through this -- well,
19 let's take it up and you can address anything that
20 comes forward if we need further information on it.

21 First of all, of course, under 353 and
22 also under 410 it's repeated in terms of the
23 staircases not going above the joist of the main floor
24 of the residential, and of course we see entrances --
25 and perhaps it's my limited understanding of this, but

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1 can you just explain? The stairs are actually
2 entering into the main level of the residential and
3 it's part of a duplex so that there is a floor below
4 which is not the main level of residential? You don't
5 have a section, do you?

6 MR. MAISTO: I don't have a section with
7 me here.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. MAISTO: My name is John Maisto, I'm
10 with EDG Architects.

11 We brought these photos along just to
12 describe exactly what the Chairman was asking about.
13 These are exterior stair structures that bring you
14 from grade to a level which is equal with the second
15 level of the flat. These are stacked flats.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. MAISTO: And then four entrances come
18 off of this one, two into the second floor level and
19 two into the third floor stacked flat. In other
20 words, you walk in and immediately you go up a private
21 stair inside the unit.

22 CHAIRPERSON GRIFFIS: So why isn't the
23 level directly next to the grade, the main level of
24 the residential?

25 MR. MAISTO: The way we have interpreted

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1 the zoning code is that's a slab on grade level. The
2 floor joists really start on the second floor.

3 CHAIRPERSON GRIFFIS: Oh. That's an
4 interesting interpretation. Okay.

5 MR. MAISTO: Just for the record, too,
6 this was a -- what's called Royal Courts Apartments,
7 was known as Bowlin Green Apartments, was an approved
8 BZA project, I think in 2002.

9 CHAIRPERSON GRIFFIS: Okay. So this
10 similar entrance is what those photographs are
11 showing. What is showing in the documents that were
12 submitted is not the same exterior material; is that
13 correct?

14 MR. MAISTO: These documents here, we have
15 brick and cementitious siding, so very similar to what
16 is shown on these photographs.

17 CHAIRPERSON GRIFFIS: Oh, okay.

18 MR. MAISTO: We wanted to use cementitious
19 siding primarily because it's a much heartier
20 material, has a much longer life, can be painted
21 various colors; you are not limited, as you know.

22 CHAIRPERSON GRIFFIS: Okay. What is the
23 reasoning behind reducing the number of units on the
24 site?

25 MR. NEWMAN: Good morning -- good

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1 afternoon.

2 CHAIRPERSON GRIFFIS: Tragically.

3 MR. NEWMAN: When we first acquired the
4 property, the intention at that point in time was to
5 do really a renovation and just going inside and
6 renovating what is inside the walls. But when we met
7 with both the community and with the government, one
8 of the primary concerns at that point was reducing
9 density, and the only way they would have any
10 agreement or work with us, if you will, is if we could
11 reduce the density in that community.

12 CHAIRPERSON GRIFFIS: What is the concern
13 with density?

14 MR. NEWMAN: The concern with density was
15 having too many people in one community, in one
16 neighborhood. To use a simple phrase, they wanted to
17 reduce the ghetto effect, and although there were --
18 a lot of those units were dense, there were still
19 going to be one-, two-bedrooms, they wanted to
20 increase family units. The initial desire of the
21 community was to take it from the number of units
22 there are today down to 50 or 60, but we just said
23 it's not economically viable to do it.

24 CHAIRPERSON GRIFFIS: The existing
25 structure, was it subsidized housing or not?

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1 MR. NEWMAN: The existing?

2 CHAIRPERSON GRIFFIS: Yes.

3 MR. NEWMAN: Yes.

4 CHAIRPERSON GRIFFIS: And are you
5 replacing it with the same type of program?

6 MR. NEWMAN: No. No. They will all be
7 for-sale units.

8 CHAIRPERSON GRIFFIS: Okay. So from my
9 understanding -- let me hear your understanding -- is
10 density an issue in terms of reducing that effect that
11 you described?

12 MR. NEWMAN: I don't understand the
13 question.

14 CHAIRPERSON GRIFFIS: And I thought I did.
15 It seems to me that you -- you just said that the
16 community wanted you to address and not replicate the
17 past density issue which created problems for them.

18 MR. NEWMAN: Uh-huh.

19 CHAIRPERSON GRIFFIS: And they were
20 looking at it as, if you reduce density, those
21 problems go away. Do you agree with that?

22 MR. NEWMAN: I think it's a combination.
23 If you reduce density and you change -- and you have
24 a different mix of folk living in the community at the
25 same time, the combination of the two can affect the

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1 problems they were talking about.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. NEWMAN: So, I mean, that's -- it's
4 not one -- there's not a silver bullet. Reduce
5 density and also have a greater mix of residents,
6 income, all socioeconomics, demographics, would be
7 able to address the situation they're talking about.

8 CHAIRPERSON GRIFFIS: And this is a
9 homeowners' situation; is that correct?

10 MR. NEWMAN: Yes.

11 CHAIRPERSON GRIFFIS: Was it previously?

12 MR. NEWMAN: No.

13 CHAIRPERSON GRIFFIS: Okay. And this is
14 probably more for my interest than actual pertinence
15 to this case, but the existing structures, which, you
16 know, one might say are not very architecturally
17 intriguing but could have some potential, what was the
18 decision that you made to take those down to rebuild?
19 Is it just that the state of them was so horrible?
20 Why not use what's there?

21 MR. NEWMAN: As for the structures, I'm
22 going to refer to the architect, but from an aesthetic
23 standpoint, what is there today looks like a public
24 housing development, and unlike when you look in a
25 number of different areas throughout the District,

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1 when condos or the apartment-style living are being
2 developed throughout the city, from the outside, they
3 look much more attractive. I mean, because I'm
4 familiar with it, you go down Connecticut Avenue and
5 you see a lot of the condos and the apartment-style
6 living that's there, they don't look like public
7 housing developments.

8 CHAIRPERSON GRIFFIS: Right.

9 MR. NEWMAN: These structures were public
10 housing developments, and anything you would do with
11 them would continue to have them look very similar to
12 public housing developments and would not be able to
13 get the kind of impact and community change that we
14 support and that the community was looking for. So
15 from the aesthetic standpoint --

16 CHAIRPERSON GRIFFIS: So you're saying
17 it's more almost a stigma of the buildings themselves
18 that was trying to be removed.

19 MR. NEWMAN: Yes.

20 CHAIRPERSON GRIFFIS: But you're not
21 saying that this type of construction and architecture
22 that you're proposing is analogous to the condos going
23 up on Connecticut Avenue.

24 MR. NEWMAN: No. No. Not at all.

25 CHAIRPERSON GRIFFIS: Well, why didn't you

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1 do it that way?

2 MR. NEWMAN: Again, couldn't afford to do
3 that.

4 CHAIRPERSON GRIFFIS: I see. Okay.

5 MR. NEWMAN: The units are all intended to
6 be affordable units, 80 percent AMI or less. That's
7 the goal that we're striving for.

8 CHAIRPERSON GRIFFIS: Interesting. So
9 let's go directly into the aspect of, one, how tall
10 these things can be based on the construction and then
11 the type of construction.

12 Okay. So going back into the pertinence
13 of what we're actually here for today -- what was
14 that? The access. It's interesting that 353 and 410
15 seem to hit several points over and over again,
16 redundant, as they say. Can you just point out --
17 actually, it's an excellent one to bring up, that site
18 plan -- what are the units that don't front door
19 access directly onto the street and just quickly
20 explain why that is occurring.

21 MEMBER ETHERLY: Mr. Chairman?

22 CHAIRPERSON GRIFFIS: Yes. I'm sorry.

23 MEMBER ETHERLY: If I could real quickly,
24 I just want to close off that little conversation that
25 we just had, not necessarily because it falls within

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1 the confines of the test but just really out of
2 curiosity, and it doesn't need to be a long answer on
3 it.

4 When you noted that these would be
5 mixed-income units but affordable housing, and you
6 used the phrase 80 percent of AMI, could you give a
7 little bit of an example as to what that means? The
8 reason why I'm asking this question is I want to be
9 very clear -- not necessarily from the standpoint of
10 the test, but I suspect as we go further along over
11 the next couple of years, we will begin to hear more
12 and more about this issue of affordable housing and
13 probably be beginning to look at or hear about some
14 things along the lines of different zoning proposals.
15 So I'm just curious about getting familiar with the
16 nomenclature. Eighty percent of AMI, how would that
17 translate?

18 MR. NEWMAN: In terms of -- well, first we
19 could do it with some of the sales -- some of the
20 sales prices of the units would be -- a one-bedroom
21 flat would be \$90,000 ranging up to a four-bedroom
22 townhouse with garage would be 244, \$244,000.

23 MEMBER ETHERLY: Okay.

24 MR. NEWMAN: And so that's kind of the
25 range that we're talking about.

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1 MEMBER ETHERLY: Okay. And when you say
2 80 percent of AMI, first of all, what is AMI? The
3 short answer, if there is one.

4 MR. NEWMAN: The area medium income.

5 MEMBER ETHERLY: Are medium income. Okay.

6 CHAIRPERSON GRIFFIS: And so that
7 fluctuates, obviously, as things change in the
8 economy.

9 MR. NEWMAN: Yes. For example, the 51 to
10 80 percent AMI for one person would be an income of
11 \$40,000, and you take it to a -- I will just do a
12 one-person versus four-person family. Fifty-seven
13 thousand dollars.

14 MEMBER ETHERLY: For a family of four.

15 MR. NEWMAN: For a family of four.

16 MEMBER ETHERLY: Okay.

17 MR. NEWMAN: And then very low -- 31
18 percent to 50 percent -- would be 30,000 and 43,000.

19 MEMBER ETHERLY: For a family of four.

20 MR. NEWMAN: For a family of four.

21 MEMBER ETHERLY: Okay. Excellent. I
22 appreciate it.

23 Thank you, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Sure. Excellent
25 point to bring up.

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1 VICE CHAIRPERSON MILLER: I just have a
2 basic follow-up question. Is there a definition of
3 "affordable housing" somewhere?

4 MR. GLASGOW: In the Zoning Regulations in
5 Chapter 17, you have affordable housing, and I think
6 it's affordable is anything that's 80 percent and
7 below, 80 percent of AMI and below.

8 VICE CHAIRPERSON MILLER: Okay. So you're
9 80 percent is tied to that regulation.

10 MR. GLASGOW: No, it's not tied to that;
11 that's just what they have determined would be the
12 market that they are dealing with with respect to this
13 project because it's not part of any test dealing with
14 this application.

15 VICE CHAIRPERSON MILLER: Okay. Thank
16 you.

17 CHAIRPERSON GRIFFIS: It's interesting you
18 bring up Chapter 17. Of course, it is an interesting
19 issue, affordability. There is an overlay, the
20 Reed-Cooke Overlay, in fact, that talks about
21 affordability but doesn't define it, and the Zoning
22 Commission has taken that up.

23 The overlay you're talking about I believe
24 is -- well, it's one of the interesting ones. But
25 there hasn't been a definitive aspect and it is, as

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1 you have said, not often part of a direct test except
2 for, for instance, Reed-Cooke and additional height
3 and density, I think it is. But affordable units need
4 to be provided.

5 I think it is something that the Zoning
6 Commission is actually looking at in terms of creating
7 a stronger definition, but it came in in terms of the
8 formula under Chapter 17 is what you're referring to
9 as to --

10 MR. GLASGOW: If you do any off-site --

11 CHAIRPERSON GRIFFIS: -- providing
12 off-site housing.

13 MR. GLASGOW: Right. I think it's in
14 1799, and the definition is at the end of Chapter 17.

15 CHAIRPERSON GRIFFIS: Right. Okay. Good.

16 Now, we're going to the 1, 2, 3, 4, 5, 6
17 that don't access onto the street; is that correct?

18 MR. MAISTO: These two buildings right
19 here, the back portion of these two buildings -- these
20 are what we call back-to-back flats, stacked flats.
21 Those 1, 2, 3, 4, 5, 6 times three -- 18 units total
22 -- do not access a front street; however, they do
23 access that stair, as we spoke about, which then goes
24 out to a landscaped spine, goes along the site. We
25 tried to enforce that landscaping site lighting to

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1 connect several spaces within the site to each other.

2 The whole design of designing this site
3 with the buildings at the perimeter speak to
4 defensible space issues: keeping eyes both into the
5 site and onto the street. So the access to those, to
6 answer your question, the access to those units are
7 from that sidewalk.

8 CHAIRPERSON GRIFFIS: Okay. And you
9 brought up some excellent points, too. So what you're
10 saying is in order to get the density that's being
11 searched for and also utilizing the site, there is
12 that portion of those buildings that have to access
13 the center.

14 MR. MAISTO: That's correct. And at one
15 point, we looked at having back-to-backs on this side,
16 too, but we didn't have enough for parking. Used up
17 too much building footprint. So what that does is
18 automatically gives you a very nice, rich mix of
19 different unit types from, as Mr. Newman said --

20 CHAIRPERSON GRIFFIS: Is it a construction
21 issue that is going here? And maybe it's just my eye
22 that goes much more to a denser, more urban type of
23 scenario here, but what precluded you from having a
24 main entrance off the street that would access those
25 back units so you would have a common corridor?

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1 MR. MAISTO: Exactly. And that's one
2 thing we like to avoid in this type of housing, is a
3 common corridor, because those tend to be
4 no-man's-land types of areas.

5 CHAIRPERSON GRIFFIS: Okay. I see. So
6 now you have an entrance. Look, I'm going home, these
7 are my stairs, I share it with one other unit, --

8 MR. MAISTO: Exactly.

9 CHAIRPERSON GRIFFIS: -- and then the
10 other side is the other. It's a bit more kind of
11 townhousey.

12 MR. MAISTO: Every unit in this entire --
13 all 76 units have their own entry to the exterior.

14 CHAIRPERSON GRIFFIS: I see.

15 MR. MAISTO: It's very important.

16 CHAIRPERSON GRIFFIS: Okay. And you
17 brought up a couple other aspects, and of course it's
18 also in your submission, in terms of the tests under
19 410. Can you speak directly to what you have called
20 in your submission attractive landscaping, public
21 greens, quality architecture -- we will get to that --
22 and specifically you can start with lighting. You
23 just indicated that there is lighting. What kind of
24 site lighting is there?

25 MR. MAISTO: We're looking at various

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1 ways. Clearly we want to light the parking lots so
2 that they are properly illuminated. This where the
3 pointer is moving is sort of a spine along the site
4 with street lighting of some sort that's decorative
5 architectural, help reinforce the main pedestrian
6 thrust through the site.

7 CHAIRPERSON GRIFFIS: Okay. So kind of
8 like ten-foot Washington standard fixtures?

9 MR. MAISTO: Correct. Correct.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. MAISTO: And I had actually sent, as
12 a response to Mr. Moore's questions, I sent him a
13 sketch of where some of that site lighting would be.

14 CHAIRPERSON GRIFFIS: Oh. Did he ask
15 that? That's a good question, Mr. Moore. Okay.

16 MR. MAISTO: As far as a public green, in
17 fact, Mr. Moore asked for a clarification of this. If
18 you see the original -- the original site plan you saw
19 just says -- it's a big rectangle; says, "The Green"
20 on it. Well, this iteration with this sketch down
21 here shows and addresses some of the aspects that we
22 wanted to do, which includes more landscaping, low
23 walls, a terracing effect because this parking lot is
24 physically several feet higher than this lower parking
25 lot, so that green sort of acts as a terrace between

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1 the two. It helps break up the site.

2 There are stairs, site stairs here and
3 here. There will be more site stairs as we finish the
4 final grading. But these are the main ones that bring
5 you from the top of the site down to the bottom.

6 The highest point on the site is right
7 here, and it slopes this way --

8 CHAIRPERSON GRIFFIS: I see.

9 MR. MAISTO: -- all the way down and
10 across.

11 CHAIRPERSON GRIFFIS: And there's only one
12 ingress and egress to each of the parking surfaces; is
13 that correct?

14 MR. MAISTO: That's correct, right through
15 here for this upper parking lot and right through here
16 for this lower parking lot, and other than the fact
17 that it's physically difficult to grade that parking
18 lot so that you would have a parking lot where
19 people's doors don't flop open on the downhill side,
20 we also wanted to avoid the typical crime pattern that
21 happens with parking lots that are permeable through
22 a site.

23 CHAIRPERSON GRIFFIS: Right. And are
24 these going to be gated entrances to the parking lot
25 or no?

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1 MR. MAISTO: No. They will not be gated.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. NEWMAN: We had contemplated keeping
4 a slope so it could look a little bit like San
5 Francisco, you know, doors are swinging right open on
6 the slope, but we chose not to.

7 CHAIRPERSON GRIFFIS: You are asking a lot
8 of your designers: Connecticut Avenue, San Francisco.
9 Okay.

10 Mr. Moore, are your questions in your
11 report?

12 MR. MOORE: No, they are not.

13 CHAIRPERSON GRIFFIS: Okay. Then I may be
14 redundant on some of the other things that they have
15 asked that actually I'm not aware of.

16 Okay. So we have the sidewalks, which you
17 talked about, the lighting on the sidewalks, the
18 ingress and egress and breaking that up, the common
19 green. And then trash -- I'm seeing two areas that
20 are enclosed for the trash pickups that are close to
21 the entrance?

22 MR. MAISTO: Right. That's correct.

23 CHAIRPERSON GRIFFIS: Okay. And then the
24 distance, the dimension for the ingress and egress,
25 what is that?

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1 MR. MAISTO: This is a 21-foot-wide drive
2 on this side and on this side --

3 CHAIRPERSON GRIFFIS: It's your
4 understanding working with this entire team of
5 consultants that that's large enough for emergency
6 vehicles to get in and access?

7 MR. MAISTO: Yes.

8 CHAIRPERSON GRIFFIS: Okay. Good. That's
9 all I have. Any other questions?

10 VICE CHAIRPERSON MILLER: Well, this could
11 be for the Office of Planning or for the applicant,
12 but I'm wondering if you heard from the D.C. Board of
13 Education with respect to the ability of local schools
14 to absorb the number of students expected?

15 MR. GLASGOW: Yes. There should be a
16 report in the file.

17 CHAIRPERSON GRIFFIS: Yes. We have that
18 in.

19 VICE CHAIRPERSON MILLER: You do?

20 CHAIRPERSON GRIFFIS: Yes. It's Exhibit
21 Number 27, but it's also attached to the applicant's
22 submission, I believe. Isn't it?

23 MR. GLASGOW: Yes.

24 CHAIRPERSON GRIFFIS: In one of your
25 appendices. Yes. It's Appendix G or H. I can never

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1 tell which way these things go. It's dated 23rd of
2 November, signed by Tracy Elright, principal of Nolle
3 Elementary School.

4 VICE CHAIRPERSON MILLER: Thank you.

5 MR. SHER: There is another report.

6 CHAIRPERSON GRIFFIS: Oh, is there another
7 one?

8 MR. SHER: Yes. Here's the other one.

9 CHAIRPERSON GRIFFIS: Let me see what we
10 have.

11 MR. GLASGOW: Exhibit 28.

12 CHAIRPERSON GRIFFIS: Exhibit 28. Okay.

13 MR. GLASGOW: A memorandum from District
14 of Columbia Public Schools.

15 CHAIRPERSON GRIFFIS: That we don't have
16 in, although we --

17 MR. GLASGOW: Well, here. I'll give you
18 mine.

19 CHAIRPERSON GRIFFIS: What's Exhibit
20 Number 28? You have it? Oh. It may have come in
21 because the Office of Planning's report is Exhibit
22 Number 29, which we received this morning, so 28 is --

23 MR. GLASGOW: I can give you my copy if
24 you want.

25 CHAIRPERSON GRIFFIS: We will make sure

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1 it's in there. Why don't you just tell us what it is,
2 who it is from?

3 MR. GLASGOW: Sure. It's a memorandum
4 from Richard Edward Smith, the architect planner,
5 Office of Facilities Management, Planning Unit,
6 Planning Design and Construction, to Ms. Crest, BZA
7 Application Number --

8 CHAIRPERSON GRIFFIS: Excellent. All
9 right.

10 MR. GLASGOW: And then we go through --

11 CHAIRPERSON GRIFFIS: Yes, I have it in
12 front of me now. We're going to give it to the Board
13 members to look at, because actually this is the
14 fullest report I have ever seen in my short time on
15 the Board. It actually does an analysis and does an
16 analysis of capacity from all the different ranges,
17 from the elementary -- or the adjacent schools, which
18 I think is fascinating.

19 All right. What else? Anything else?

20 VICE CHAIRPERSON MILLER: Maybe you can
21 draw to my attention if this is in the record also, a
22 response from the Department of Transportation and
23 then Housing and Community Development. Did we get
24 that?

25 MR. GLASGOW: I'm not aware of getting a

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1 response from them.

2 VICE CHAIRPERSON MILLER: Okay. Thank
3 you.

4 MR. GLASGOW: We have one from DHCD but
5 not from DOT.

6 CHAIRPERSON GRIFFIS: Exhibit 26 is DHCD.

7 MR. GLASGOW: Right. DOT, no; DHCD, yes.

8 VICE CHAIRPERSON MILLER: Okay. Thank
9 you.

10 CHAIRPERSON GRIFFIS: Nothing else? Okay.
11 Let's move on, then.

12 Anything else?

13 MR. GLASGOW: I believe, if you have
14 everything that you need to request from the
15 architect, we've got Mr. Sher here for any questions,
16 and we have Mr. Marty Wells here for any questions.

17 CHAIRPERSON GRIFFIS: Okay. Are there any
18 questions from the Board on any of these for either of
19 those two witnesses? Actually, Mr. Sher's report,
20 which is Attachment E, is an excellent one. You know,
21 this could be very complicated with all the different
22 tests and requirements and all that kind of stuff.

23 It's kind of fascinating that you have to
24 have residential approved in the R-5 zones. It's, you
25 know, kind of fun for us; I don't know how much it is

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1 for you. But nonetheless, especially with 353 and 410
2 coming at it, there are great specificities.

3 It fascinates me to try to get to the
4 intent of these. You know, like I spend a lot of time
5 -- like no more than four units on a single floor or
6 five front doors, you know, all that good stuff. But
7 Mr. Sher's report always puts it into great order and
8 logic, so it is appreciated to have this in on this,
9 which I think was very helpful.

10 CHAIRPERSON GRIFFIS: Does any other Board
11 member have questions on that?

12 You know what's interesting too, that
13 under 410, multiple buildings are covered. It's
14 almost an anticipation of a large lot. It's almost
15 like a -- it's a PUD light. Would you agree?

16 MR. GLASGOW: With the R-5-A site plan
17 review, there was a determination made that there
18 needed to be more involvement by the Board in going
19 through this type of a process, and it allows you
20 either to do one lot or several lots. We are going to
21 have several lots with buildings, structures from the
22 ground up, so each one of those could in other
23 instances be deemed to be a separate building, but
24 then each cluster is deemed a single building.

25 CHAIRPERSON GRIFFIS: Right.

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1 MR. GLASGOW: And this is the process
2 where you have that happen.

3 CHAIRPERSON GRIFFIS: Which brings up an
4 interesting aspect. Each of these units is going to
5 be sold as a condo, right?

6 MR. GLASGOW: Correct.

7 CHAIRPERSON GRIFFIS: So it's a fee simple
8 -- well, whatever it is. It's a condominium
9 transaction. Wow. What kind of -- well, I won't go
10 into that.

11 Okay. Anything else? Any other
12 questions? Clarifications?

13 (No response.)

14 CHAIRPERSON GRIFFIS: I think we should
15 move ahead, then, and if there is nothing further from
16 the applicant in the presentation of the case -- I
17 think it's all here -- let's go on to the Office of
18 Planning's report, which we have alluded to already.

19 Mr. Moore, a very good afternoon to you,
20 and why don't you run us through this.

21 REPORT FROM THE OFFICE OF PLANNING

22 BY JOHN MOORE

23 MR. MOORE: Good afternoon, Mr. Chair and
24 members of the Board. I'm John Moore with the Office
25 of Planning.

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1 We at the Office of Planning generally
2 stand in support of this application. I would like to
3 direct the Board's attention to a document that is
4 being given to you now.

5 CHAIRPERSON GRIFFIS: Good. Thank you.

6 MR. MOORE: Let me start with a statement.

7 CHAIRPERSON GRIFFIS: Sure.

8 MR. MOORE: If any of you watched the news
9 about two weeks ago, there was an incident where a
10 woman was carjacked, and in the back of the car was a
11 small child and that child was deposited at a location
12 other than with the mother, of course, and left. This
13 is where that child was dropped off at, in the 1400
14 block of C, which is currently a desolate location of
15 many, many, in addition to these, vacant and abandoned
16 buildings.

17 The history of development in much of East
18 of the River has been garden apartments built without
19 any sensitivity to the environment or design
20 standards, and because of that, many of these
21 buildings failed and they are all over the landscape
22 right now.

23 This is an opportunity where the developer
24 is not only going to come in and redo these buildings,
25 but they are going to substantially reduce the

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1 density, and we totally support that in this case.
2 Even with the units that will not front onto public
3 space -- it is actually a safety factor. This is a
4 Vanguard project. It's the first of hopefully many
5 that's going to really transform the Marshal Heights
6 community. As I say, when you look around these
7 buildings, other than the ones they have, there are
8 many other opportunities there.

9 So we totally support removing that
10 desolate location so that children can't be dropped
11 off there because it becomes a haven for criminal
12 activity when it can be vibrant with projects such as
13 this one.

14 The document that you have just been
15 distributed, I asked the developer to take a look at
16 three areas: one, the history of -- and we've got
17 many, many, many complaints about people who live in
18 the apartment buildings, especially East of the River,
19 with respect to the walls being paper thin and the
20 floors being thin, so therefore sound transmits from
21 unit to unit and eventually people feel negative about
22 the buildings and it begins the process of failing.

23 Second, as the applicant already stated,
24 the green was a triangular shape in the middle of the
25 project, and over time, let's face it, where there are

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1 two schools on two sides of it and lots of children
2 can go there to play, parents are not going to let
3 three-and four-year-olds and toddlers go to those lots
4 to play.

5 We asked the developer if they would take
6 a look at making the green a more statement sort of
7 area, and I want to commend them. They have done, I
8 think -- what I didn't give you is a copy of the site
9 plan. Maybe they have it and they can distribute it
10 to you, or it should be a part of this record at some
11 point.

12 They have taken that green space and
13 converted it by putting in some scoring in the middle
14 that consists of concrete with some statute in the
15 middle, there will be benches, there will be even a
16 tot lot there so that the parent can see from their
17 windows what small children are doing in the middle of
18 the property, as well as, as opposed to looking at a
19 parking lot, now they look at a green that's got some
20 development on it.

21 We asked also that there be trees and
22 stuff that would border the green for shade as well as
23 a feature that would break up the two parking lots,
24 and they are planting evergreen along the sidewalks in
25 front of the units. I'm pretty excited about the way

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1 they responded to what we asked them to do in that
2 regard.

3 So that's the two areas. There's the
4 soundproofing and the green space.

5 We also took a look at the parking lot
6 itself and made some suggestions and asked them to
7 take a look at how can you further differentiate from
8 the parking spaces to the units -- again, people
9 looking out of a building into a parking lot. Now
10 they responded by adding some green, some shrubbery,
11 flowers and planting and, of course, lighting, which
12 would enhance this project tremendously.

13 With that being said, I'm sorry that you
14 just got this information today, and I didn't give you
15 the landscape plan. The developer can give you that.
16 We think it enhances the project tremendously and we
17 totally support it.

18 CHAIRPERSON GRIFFIS: Great. Excellent
19 words and we appreciate that and appreciate getting
20 the very substantial report that the Board has had
21 limited but taken its opportunity to get through.

22 Are there any questions or follow up from
23 the Board?

24 MEMBER ETHERLY: Very quickly, Mr. Chair.

25 CHAIRPERSON GRIFFIS: Yes, Mr. Etherly.

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1 MEMBER ETHERLY: I will extend somewhat
2 the same question to Mr. Moore that I extended to the
3 applicant with the caveat that I'm not inviting a long
4 answer because I know there is a long answer to it.
5 But in looking at that question of affordable housing
6 and the inclusion of affordable housing in
7 developments of this type, especially as we start to
8 go East of the River where the opportunities are I
9 think just tremendous, has the Office of Planning
10 begun to look or been involved in looking at the
11 questions as well?

12 MR. MOORE: Yes, we are looking at it. I
13 believe somewhere in the regulation it may say either
14 as defined by DHCD or DHCD has some monitoring
15 responsibility for --

16 CHAIRPERSON GRIFFIS: Which should be the
17 HUD standards, and the HUD standards set an
18 affordability level.

19 MR. MOORE: The HUD standards -- I think
20 DHCD is the vehicle in the zoning --

21 CHAIRPERSON GRIFFIS: Right.

22 MR. MOORE: -- in the zoning regulation.
23 It may have some responsibility in that area.

24 CHAIRPERSON GRIFFIS: Right.

25 MEMBER ETHERLY: Okay.

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1 MR. MOORE: But yes, we are taking a look
2 at it.

3 MEMBER ETHERLY: Okay. Thank you.
4 Thank you, Mr. Chair.

5 CHAIRPERSON GRIFFIS: Good. Excellent
6 question. Any other follow up from the Board?

7 Does the applicant have cross-examination
8 of the Office of Planning?

9 MR. GLASGOW: No. No. We appreciate
10 working with Mr. Moore on this project.

11 CHAIRPERSON GRIFFIS: Indeed. Okay.

12 Let's move on. I think we have really
13 addressed or noted the other governmental agencies
14 that have submitted, and I have DHCD, we have the
15 Public Schools, the two reports now, and we also have
16 -- what else? We don't have DOT. Is that it? Okay.
17 Then I think that's everything except for now the
18 ANC-7E, which is attached in your submission, which is
19 Exhibit 27, Tab F.

20 Is there, again, any ANC representative
21 here today, 7E?

22 (No response.)

23 CHAIRPERSON GRIFFIS: Not noting any ANC
24 member currently with us, we take that -- there is
25 some question in my mind, was there an ANC resolution

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1 or a vote? Obviously the letter submitted is very
2 supportive and I think we can -- obviously we take
3 that for great support, but was there official action
4 by the ANC so that we might be able to give it great
5 weight?

6 MR. MAISTO: One of the many ANC meetings
7 we went to through the summer of this past year, we
8 presented them with various materials, sort of talked
9 to them about what constitutes nice housing elements
10 architecturally. It was sort of an in-service almost,
11 and we provided this very rudimentary massing model
12 for them to understand how primarily the perimeter of
13 the site is made by these buildings. At, I don't
14 know, the fourth or fifth meeting that we went to, we
15 had an official signoff that showed support. They
16 pulled out a bunch of Sharpies and signed --

17 CHAIRPERSON GRIFFIS: And they signed it.

18 MR. MAISTO: They actually signed the --

19 CHAIRPERSON GRIFFIS: So it's a literal
20 signoff.

21 MR. MAISTO: It's a literal signoff.

22 CHAIRPERSON GRIFFIS: I like that.

23 MR. MAISTO: And as you can see --

24 CHAIRPERSON GRIFFIS: You don't get that
25 back now, though. It's a part of our exhibits.

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1 MR. GLASGOW: We have photocopies of it
2 for the record.

3 CHAIRPERSON GRIFFIS: You were
4 anticipating that one.

5 MR. MAISTO: And it is water damaged. It
6 has been to many meetings. As you can see, these
7 exhibits are pretty tattered.

8 CHAIRPERSON GRIFFIS: Okay. Well, I don't
9 think the Board is questioning whether they were
10 supportive or not, and I think that's actually very
11 amusing to see.

12 MR. NEWMAN: There was a vote at a June
13 2nd meeting.

14 CHAIRPERSON GRIFFIS: Okay. Do you have
15 the ANC minutes?

16 MR. NEWMAN: We don't have the resolution
17 -- we do not have it here with us, but we have the
18 sign-in sheet and the day that the meeting did happen,
19 so we can --

20 CHAIRPERSON GRIFFIS: Okay. Well, not to
21 be a stickler, but our regulations are very clear on
22 what they have to submit in terms of a letter. It has
23 to state that a quorum was present, what the quorum
24 was, what the vote was, and all that stuff.

25 That being said, good. We have this.

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1 Okay. What else? I don't have anything else
2 attendant to this in terms of government agency
3 reports or the ANC. Let's move on to any person
4 present either in support or in opposition.

5 MR. MOORE: Mr. Chairman?

6 CHAIRPERSON GRIFFIS: I'm sorry.

7 MR. MOORE: The document I gave you, I
8 have also the landscaping plan and the response to the
9 parking plan that I can enter into the record and have
10 you approve, if so, conditioned on those two
11 documents.

12 CHAIRPERSON GRIFFIS: You have attached to
13 your report the landscaping?

14 MR. MOORE: No, no, no. The document I
15 just gave you that talks about the three areas that
16 they're looking at also has the landscaping plan that
17 they gave me and a copy of the parking lot.

18 MR. GLASGOW: We're going to introduce
19 into the record --

20 CHAIRPERSON GRIFFIS: You're going to put
21 that in the record, right?

22 MR. GLASGOW: We're going to put that into
23 the record, that drawing there with the --

24 CHAIRPERSON GRIFFIS: What we were looking
25 at in terms of the green?

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1 MR. GLASGOW: We have the sketch and --

2 CHAIRPERSON GRIFFIS: Mr. Moore, is that
3 what you have?

4 MR. MOORE: Yes.

5 CHAIRPERSON GRIFFIS: Okay. Right. We
6 obviously are getting that into the record, and that
7 will serve as the landscaping plan?

8 MR. GLASGOW: Right.

9 CHAIRPERSON GRIFFIS: And the parking
10 plan.

11 MR. GLASGOW: Correct.

12 CHAIRPERSON GRIFFIS: Okay. Noting that
13 if that's being proposed, that that's what the Board
14 will look at when you construct it. So as you go
15 through the landscaping, the trees and all that, will
16 be as they are showing on that plan.

17 MR. GLASGOW: That is the plan we are
18 submitting for approval.

19 CHAIRPERSON GRIFFIS: Excellent. Okay.
20 I think that's absolutely clear.

21 Where are we getting this stuff from?

22 MR. MOORE: I gave you the narrative.

23 CHAIRPERSON GRIFFIS: You gave us the
24 narrative and now you're attaching the sketches.
25 Okay. All right. This is excellent. These are your

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1 documents; is that correct, Mr. Glasgow?

2 MR. GLASGOW: That is correct. And you
3 have a copy of what Mr. Moore has passed us in terms
4 of the letter, the narrative and then these two
5 sketches.

6 MR. GLASGOW: Yes. Those are Mr. Maisto's
7 drawings.

8 CHAIRPERSON GRIFFIS: Excellent. Okay.

9 MR. MAISTO: My drawings and my memo is
10 attached. What I did was I sent a memo separately
11 from the drawings.

12 CHAIRPERSON GRIFFIS: Sure.

13 MR. MAISTO: But they all came the same
14 day.

15 CHAIRPERSON GRIFFIS: Good. Okay. In
16 which case this is being passed to us; we will put
17 this into the record as exhibit -- probably 30 or
18 something of that nature. Okay.

19 Back to persons present to give testimony.
20 Anyone in support or in opposition of Application
21 17252?

22 (No response.)

23 CHAIRPERSON GRIFFIS: Okay. Not noting
24 anybody here, Mr. Glasgow, we will turn it over to you
25 for any closings.

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1 MR. GLASGOW: We would like to ask for a
2 bench decision and a summary order. We believe we
3 have met the burden of proof in this case.

4 CHAIRPERSON GRIFFIS: I don't know if that
5 beat a record, but it's close for closing remarks and
6 timing.

7 Any follow up questions, clarifications?
8 Is the Board ready to proceed on this today? Not
9 noting any objection to proceeding today, I think it's
10 appropriate to do so and continue our deliberation
11 under a motion. I would move approval of Application
12 17252 of the AmeriDream Amber Overlook LLC. This is
13 for a special exception for the new residential
14 development under Section 353 and for the multiple
15 buildings to be considered as a single building under
16 Section 410 which would allow for the construction of
17 the residential development containing 76 row
18 dwellings, flats and multifamily dwellings at premises
19 4922, 4930 Call Place, and all the other addresses
20 attached to this.

21 MEMBER ETHERLY: A very enthusiastic
22 second, Mr. Chairman.

23 CHAIRPERSON GRIFFIS: Thank you, Mr.
24 Etherly.

25 Once again, I think this case has been put

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1 together very succinctly and directly, and I must say
2 that that goes a long distance for the Board's
3 understanding, which obviously moves procedures along.

4 Getting to the substance of this, we do
5 have the special exception. The tests laid out in 353
6 have all been met as has been testified today and
7 clarified today. I think it has gone above -- the
8 hearing today was important for me personally to look
9 at some of the aspects that were of initial concern,
10 not of great concern, but I think we have really
11 ironed those out, and Mr. Moore I think did an
12 excellent job in really continuing the discussion of
13 this.

14 In terms of when you look at it, obviously
15 it's a great situation to correct a poor situation and
16 create something new, but you might as well go the
17 distance to do all those aspects and elements that
18 will be valuable as the new residents move in, and
19 that goes to how the pedestrians get in and out, what
20 the flow is, what the safety is.

21 It was appreciated to hear the designer or
22 the architect to talk about the protective edges, be
23 it people and how they are going to populate this and
24 the cars and the vehicle access in and out, and the
25 public green, you know, it is one thing -- I will

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1 digress just for a quick second.

2 We get a lot of applicants that come in
3 and throw around the words, and, you know, I can
4 understand that, and you make these monumental
5 statements of all these great things you are going to
6 do. You know, for our sake, we see five or six to ten
7 applications a week. You know, we hear all these
8 words and they all seem to have different levels of
9 meaning. When you do start throwing around "the
10 green," it evokes, for me, anyway, a real value, a
11 real element. So it's excellent to see that it's
12 actually being looked at in the same manner and
13 creating someplace that will have a multiple of uses,
14 be it the people spilling out having barbecues to the
15 kids hanging out after kids or bringing their younger
16 daughters or brothers and sisters.

17 So that being said, I think the intent of
18 the regulations in looking at this and into the review
19 of the special exception goes directly to these
20 aspects, specifically laying out to make sure that
21 things are safely done and appropriately done, but it
22 opens up to a public forum where this discourse needs
23 to take place in order to address these issues.

24 I think the landscaping is also an
25 important issue as to how we look at this, the

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1 building site, the circulation, and then how the
2 landscape fits into it, and the landscaping, when I
3 look at it, actually goes to the lighting and to the
4 vegetation. I think it's appropriately done. It's
5 not over done but obviously will create a kind of
6 breaking up of a large area on a large site.

7 So let me leave it at that and open it up
8 to any other members for their comments and
9 deliberative piece.

10 MEMBER ETHERLY: Mr. Chair, I think you
11 hit it right on the head, and I will further applaud
12 the Office of Planning report because I think the
13 Office of Planning report was very helpful in some
14 very important areas.

15 I think clearly this was a very strong
16 application with regards to the elements of the test
17 at hand, but I think perhaps the most important part
18 of this action for the BZA and the Office of
19 Planning's review is found in the Office of Planning's
20 discussion of the Ward 7 housing plan.

21 In particular, as we talk about
22 transitioning our existing housing stock East of the
23 River from older properties to newer visions, to more
24 exciting and innovative visions, I think that's really
25 where the rubber starts to meet the road, if you will,

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1 with regard to some of the challenges that are going
2 to await this body as well as the Zoning Commission
3 and really the city at large in terms of how to
4 facilitate that transition and do it in a way that's
5 creative and enables us to bring quality housing
6 alternatives East of the River and to all parts of our
7 city where perhaps development has been a little
8 slower.

9 I think it is more than appropriate for us
10 to take the action today that we are moving toward.
11 I would applaud the applicant for bringing the project
12 forward, and I think, without overstepping my bounds,
13 I think it's also important to applaud counsel in this
14 regard as well because I seem to recall that we've had
15 quite a few projects start to make their way through
16 the BZA process where the thinking and the vision, if
17 you will, around the types of challenges that need to
18 be overcome within our own zoning regs to facilitate
19 these types of projects, that thinking is to be
20 commended as well, because I don't think we're
21 necessarily there yet in terms of perhaps having the
22 clearest and strongest language in portions of our
23 zoning rules and regulations around this issue, but I
24 think clearly, and the Office of Planning report
25 talked about it with respect to the Ward 7 housing

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1 plan and some of the elements of the special exception
2 test, there is definitely within the language of our
3 zoning regs space and spirit and intent, I believe, to
4 accommodate these types of projects.

5 But I think clearly, as we continue to
6 move forward, there is going to be a lot more work
7 that needs to be done to ensure that our zoning regs
8 continue to stay up to date and abreast with the kinds
9 of things that we want to see happening East of the
10 River and in other parts of our community and our
11 city. So I think it's an excellent project and I look
12 forward to groundbreaking, look forward to seeing it
13 up and running, and look forward to seeing a lot of
14 new homeowners coming into that neighborhood and
15 staying in that community.

16 Thank you, Mr. Chair.

17 CHAIRPERSON GRIFFIS: Good. Thank you.

18 Others? Yes.

19 VICE CHAIRPERSON MILLER: Not to be too
20 redundant, but I also want to commend the applicant
21 for a great project, which certainly appears to be an
22 incredible improvement of what was there before, and
23 a great contribution to the community.

24 In addition to meeting the test, it
25 clearly is consistent with the comprehensive plan and

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1 it clearly furthers the goals of the Ward 7 housing
2 section objectives, which are to stimulate development
3 of new and rehabilitated housing at affordable rates
4 to meet the needs of all income levels -- particularly
5 good housing at affordable rates for low and moderate
6 income.

7 This is a great contribution and I just
8 also would recommend that we do condition, or however
9 we want to phrase it, the application on the
10 architect's memorandum that was submitted to us that
11 addresses the soundproofing, the green, the parking
12 lot, all areas that are addressed pretty clearly and
13 fully and make for the great project that it is.

14 CHAIRPERSON GRIFFIS: Excellent. Some
15 good points there. I would agree and accept that into
16 the motion for the three conditions regarding the
17 soundproofing, the green, and the parking lot.

18 Lastly, although there seems to be some
19 support for this project on this Board, it obviously
20 isn't going -- I don't think we could get there and
21 really talk about our positive feelings overall about
22 it unless we had gotten through the test, and that's
23 really what it went to.

24 I will just reiterate one point under 410
25 which was talking about the free access to the street

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1 of each separate dwelling unit, and we discussed a lot
2 about that, and actually what is interesting is Office
3 of Planning indicating not only is that not a negative
4 or something that would have a negative impact but
5 actually a positive in terms of again going to
6 creating, as the architect has said, the eyes on the
7 interior.

8 So I think it not only satisfies the test,
9 but, you know, what we always like to see is a step
10 beyond to creating a positive out of actually not
11 complying strictly with the regulations or the
12 requirements in the regulations.

13 Okay. If that is all we need to do on
14 this, we have a motion before us. It has been
15 seconded. The motion has been conditioned. We will
16 craft, the Board, ourselves, the actual wording of the
17 conditions to incorporate the architect's memorandum
18 and the Office of Planning's comments.

19 That being said, I ask for all in favor of
20 the motion to signify by saying aye.

21 (Chorus of ayes.)

22 CHAIRPERSON GRIFFIS: And opposed?
23 Abstaining?

24 (No response.)

25 CHAIRPERSON GRIFFIS: Very well. Why

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1 don't we record the vote.

2 MS. BAILEY: Mr. Chairman, the vote is
3 recorded as 4-0-1 to approve the application. Mr.
4 Griffis made the motion, Mr. Etherly second, Mr. Mann
5 and Mrs. Miller in agreement. We do not have a Zoning
6 Commission member with us today. And we are doing a
7 summary order on this, Mr. Chairman?

8 CHAIRPERSON GRIFFIS: Summary order with
9 conditions as noted, yes.

10 MS. BAILEY: Yes, sir. Thank you.

11 CHAIRPERSON GRIFFIS: I believe we can
12 waive our regulations and do that unless there is any
13 objection from any of the Board members. Not noting
14 any objections, we will issue a summary order on that.

15 Good. Thank you all very much. I
16 appreciate your patience being down here all morning.
17 Good luck, and we will look for that simultaneous
18 development of all the units.

19 Excellent. Is there any other issue for
20 us, Ms. Bailey?

21 MS. BAILEY: Not for the morning, Mr.
22 Chairman.

23 CHAIRPERSON GRIFFIS: Very well. Let's
24 adjourn the morning session, and we will break for
25 lunch. We are going to call the afternoon session at

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1 1:45 today.

2 (Whereupon, at 12:55 p.m., the public
3 hearing recessed, scheduled to reconvene at 1:45 p.m.)
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1 AFTERNOON SESSION

2 (2:08 p.m.)

3 CHAIRPERSON GRIFFIS: Good afternoon,
4 ladies and gentlemen. Let me call to order the
5 afternoon session of the 14th of December 2004 for the
6 Board of Zoning Adjustment for the District of
7 Columbia. This is, of course, our public hearing.

8 My name is Geoff Griffis, Chairperson.
9 Joining me today is Ms. Miller, Vice Chair, and also
10 Mr. Etherly. Representing the National Capital
11 Planning Commission with us is Mr. Mann, and
12 representing the Zoning Commission this afternoon is
13 Mr. Hildebrand.

14 Copies of today's hearing agenda are
15 available for you. They are located on the wall where
16 you entered into the hearing room. Please pick one
17 up; you will see where you are on the schedule for the
18 afternoon.

19 There are several very important aspects
20 to all public hearings and all forums before the Board
21 of Zoning Adjustment. I'm going to run through them
22 kind of quickly so that we can make up some time for
23 the afternoon.

24 First of all, all proceedings before the
25 Board of Zoning Adjustment are recorded. They are

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1 recorded in two fashions. First of all, the court
2 reporter sitting to my right is creating the official
3 transcript for the record. Secondly, we are being
4 broadcast live on the Office of Zoning's website.

5 Attendant to both of those, there are
6 several things. We would ask that everyone turn off
7 their cell phones and beepers at this time so we don't
8 disrupt the proceedings and those giving testimony
9 before the Board.

10 Also attendant to that, we would ask that
11 when coming forward to speak to the Board, you have
12 two witness cards filled out. Witness cards are
13 available hopefully at the table close to the door
14 where you entered. If not, there are some in front of
15 us where you will provide testimony. Those two cards
16 go to the recorder prior to coming forward to address
17 the Board.

18 I would also ask that everyone present
19 today of course refrain from making any disruptive
20 noises or actions in the hearing room so that we don't
21 interrupt those that are providing important testimony
22 for the Board and its consideration.

23 The order of procedure for special
24 exceptions and variances is first, we hear from the
25 applicant in their case presentation. Second, we will

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1 hear any government reports attendant to the
2 application. Third, we will hear from the Advisory
3 Neighborhood Commission. Fourth will be persons or
4 parties. Fifth would be persons or parties in
5 opposition to an application. Sixth, finally, we will
6 have the applicant present any rebuttal testimony or
7 witnesses and summations and conclusions.

8 Cross-examination of witnesses is
9 permitted by the applicant and parties in the case.
10 The ANC within which the property is located is
11 automatically a party in the case and so will,
12 obviously, be able to conduct cross-examination.

13 The record will be closed at the
14 conclusion of our hearing this afternoon except for
15 any material that is requested by the Board, and we
16 will be very specific as to what material should be
17 submitted into the record and when it is to be
18 received into the Office of Zoning. After that
19 material is received, the record would be finally
20 closed and no other information is accepted into the
21 record.

22 The Sunshine Act requires that this Board
23 conduct all its proceedings in the open and before the
24 public. This Board may enter into executive session
25 both during or after a hearing on a case, and that

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1 would be for the purposes of reviewing the record
2 and/or deliberating on the case. This would be in
3 accordance with the Sunshine Act and our rules and
4 regulations and procedures.

5 Let me ask at this time, anyone that is
6 proposing to -- well, let me first say a very good
7 afternoon to Ms. Bailey, who is sitting at my very far
8 right, and also Mr. Moy, who is a little bit closer on
9 my right, both from the Office of Zoning, and Ms.
10 Monroe representing the Office of Attorney General is
11 with us also today -- I'm sorry. Ms. Glazer. Ms.
12 Glazer is with us. Indeed, that's why the Office of
13 Zoning is here to make sure I make no catastrophic
14 mistakes outside of the small ones that I will.

15 Let us move today, then. I would have
16 everyone who is going to present testimony in front of
17 the Board to please stand and give your attention to
18 Ms. Bailey and she is going to administer the oath.

19 (Witnesses sworn.)

20 CHAIRPERSON GRIFFIS: Thank you all very
21 much.

22 At this time, the Board will consider any
23 preliminary matters. Preliminary matters are those
24 which relate to whether a case will or should be heard
25 today, such as requests for postponements,

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1 continuances, or withdrawals, or whether proper and
2 adequate notice of the application has been provided.

3 If you are not prepared to go forward
4 today or you believe the Board should not go forward
5 with hearing a case this afternoon, I would ask that
6 you come forward and have a seat at the table in front
7 of us as an indication of any preliminary matter.

8 Ms. Bailey, again a very good afternoon to
9 you. Do you have any preliminary matters for the
10 Board's attention?

11 MS. BAILEY: And good afternoon to you,
12 Mr. Chairman, and to everyone present today.

13 Yes, Mr. Chairman, there are two
14 preliminary matters, and the first one has to do with
15 Appeal Number 17121 of Southeast Citizens for Smart
16 Development, Inc. That application was withdrawn.

17 CHAIRPERSON GRIFFIS: Excellent. Thank
18 you. So there is no official action from the Board
19 required.

20 MS. BAILEY: None is needed, Mr. Chairman.

21 CHAIRPERSON GRIFFIS: Good.

22 APPLICATION OF LAUREL CAPPA

23 17254 ANC-2B

24 MS. BAILEY: And then the second
25 preliminary matter has to do with Application Number

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1 17254 of Laurel Cappa. The applicant in that case is
2 requesting a postponement until March of next year.

3 CHAIRPERSON GRIFFIS: Okay. Very good.

4 And that's you, sir; is that correct? If
5 you wouldn't mind, you can just turn your microphone
6 on. There is a button right on the base. If you
7 would just give your name and your address for the
8 record.

9 MR. FERNEBOK: Andrew Fernebok. That's
10 F-e-r-n-e-b-o-k. My address is 19824 Bazzellton
11 Place, Montgomery Village, Maryland 20886.

12 CHAIRPERSON GRIFFIS: And what is your
13 relation to this application?

14 MR. FERNEBOK: I'm the expeditor, permit
15 runner.

16 CHAIRPERSON GRIFFIS: Oh, I see. So you
17 are just presenting the letter that is requesting a
18 postponement.

19 MR. FERNEBOK: Right.

20 CHAIRPERSON GRIFFIS: I see. Okay. Good.
21 And we have postponement until a March hearing date?
22 Is there a specific March date that applicant was
23 looking for?

24 MR. FERNEBOK: Whatever the next March
25 date is. I'm not aware of what the next exact date

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1 is, but I know it's in March.

2 CHAIRPERSON GRIFFIS: Ms. Bailey, Mr. Moy,
3 how do we look in March?

4 MS. BAILEY: Mr. Chairman, as far as I can
5 tell at the moment, March is available, and so if you
6 have -- if the gentleman has a specific date in mind.
7 Otherwise, it seems to be open at this point.

8 CHAIRPERSON GRIFFIS: And we don't have
9 any objections to -- did the ANC or any other
10 participants in this speak to the postponement issue?
11 I don't remember seeing any.

12 MS. BAILEY: No, Mr. Chairman.

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. BAILEY: I don't recall that, either.

15 CHAIRPERSON GRIFFIS: Why don't we set
16 this for the 8th of March?

17 MS. BAILEY: Okay. So the hearing has
18 been postponed until March 8th. That's in the
19 morning, Mr. Chairman?

20 CHAIRPERSON GRIFFIS: How much do you know
21 of this case? Let me ask you directly. There was
22 some indication that they may be revising this to
23 bring it in under a special exception?

24 MR. FERNEBOK: Right.

25 CHAIRPERSON GRIFFIS: And that is what is

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1 anticipated at this time?

2 MR. FERNEBOK: Right. And plus the owner
3 was experiencing some health problems.

4 CHAIRPERSON GRIFFIS: Right. No, I
5 understand. I don't think we're questioning a
6 postponement; I'm questioning whether I put it in the
7 morning or the afternoon. Do you know if they have a
8 preference of which it would be?

9 MR. FERNEBOK: I would assume the morning,
10 but I can't say for sure.

11 CHAIRPERSON GRIFFIS: Excellent. Let's do
12 that. We will put it on the morning session of the
13 8th of March, and, you know, interesting enough,
14 that's 2005. Wow. Okay. There it is, then.

15 MR. FERNEBOK: All right.

16 CHAIRPERSON GRIFFIS: Anything else?
17 Everyone in agreement with that position? Good.

18 Ms. Bailey, is that clear?

19 MS. BAILEY: That's clear to me, Mr.
20 Chairman.

21 CHAIRPERSON GRIFFIS: Is there anything
22 else we can do for you?

23 MR. FERNEBOK: No, that's it.

24 CHAIRPERSON GRIFFIS: Thank you very much.

25 MR. FERNEBOK: Thank you.

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1 CHAIRPERSON GRIFFIS: We appreciate you
2 being down here in present to present that.

3 MR. FERNEBOK: Thank you.

4 CHAIRPERSON GRIFFIS: Very well, Ms.
5 Bailey. I think we're ready for the next case.

6 APPLICATION OF 3DG DELTA LLC

7 17255 ANC-1A

8 MS. BAILEY: Application Number 17255 of
9 3DG Delta LLC, pursuant to 11 DCMR 3103.2, for a
10 variance from the off-street parking requirements
11 under Subsection 2101.1 to allow the construction of
12 a flat. The property is located in the C-2-A District
13 at premises 3313 11th Street, Northwest, Square 2841,
14 Lot 44.

15 MR. GOLDMAN: Good afternoon. My name is
16 John Goldman. My address is 1353 Parkwood Place,
17 Northwest, Washington, D.C. 200010.

18 MR. SHEM: My name is Ray Shem, S-h-e-m,
19 and I live at 1475 Euclid Street, Northwest, Apartment
20 105, Washington, D.C. 20009. I am associate of Mr.
21 Goldman's.

22 CHAIRPERSON GRIFFIS: Excellent.

23 Is Floraberta Bravo present today?

24 (No response.)

25 CHAIRPERSON GRIFFIS: Sally Tyler?

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1 (No response.)

2 CHAIRPERSON GRIFFIS: Is anyone else here
3 attendant to this application, 17255 of 3DG Delta LLC?

4 (No response.)

5 CHAIRPERSON GRIFFIS: Interesting. Okay.

6 Board members, we have a preliminary
7 matter in this case and we have two requests for party
8 status. Do we just have two?

9 VICE CHAIRPERSON MILLER: Yes.

10 CHAIRPERSON GRIFFIS: Which were not
11 timely filed, Exhibit Number 27 that we have in front
12 of us. Quite frankly, I'm not sure that we need or
13 tend to take these issues individually in terms of the
14 timeliness in filing and all that. Let's take it all
15 together. I think this is obvious in terms of the
16 single issue or the issues that they have brought up
17 that I think we can, and probably more appropriately,
18 take it as written testimony in opposition to this
19 application. Having the persons not present today of
20 course goes to the difficulty of fully participating
21 as a party, and I think we can -- I would not support
22 granting party status at this time for the two
23 applicants, but I would take others' comments.

24 MEMBER ETHERLY: I agree, Mr. Chair.

25 VICE CHAIRPERSON MILLER: I agree, Mr.

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1 Chair.

2 CHAIRPERSON GRIFFIS: Okay.

3 MEMBER MANN: I'm also in agreement.

4 CHAIRPERSON GRIFFIS: Very well.

5 COMMISSIONER HILDEBRAND: I agree as well.

6 CHAIRPERSON GRIFFIS: Then we will take it
7 as a consensus of the Board to deny the party status
8 for those issues that were raised for both Ms. Bravo
9 and Ms. Tyler and note that we will accept into the
10 record as written testimony in opposition mostly
11 speaking to the off-street parking requirements and
12 the demand for parking in the area adjacent to the
13 proposed construction.

14 I don't note any other issues for the
15 Board's immediate attention, so we will turn it over
16 to you gentlemen for presentation of your case.

17 MR. SHEM: Good afternoon. Thank you very
18 much.

19 Today we are before you to request a
20 variance, as it was said, from the required one
21 parking space for every two residential units in Zone
22 C-2-A. We are requesting this variance overall in
23 addition to the three burden-of-proof points because
24 of the community interest in the zoning, spirit of the
25 zoning regulations, we believe.

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1 Our lot is an irregularly shaped lot with
2 no rear alley access or side alley access, and in
3 order to accommodate the one required parking space,
4 it would be required to create a curb cut and a
5 private driveway for this building, and it is our
6 intention today through this variance to avoid having
7 to provide a private driveway for the one required
8 parking space.

9 It is our belief that reducing the
10 publicly available parking spaces by one to guarantee
11 a private parking space is contrary to the zoning
12 regulation and it would be more beneficial to the
13 community to have at least this opportunity for the
14 one public space to remain.

15 In addition to this overarching sentiment,
16 there are reasons for why this would be an undue
17 burden to the owner of the property -- that is,
18 ourselves. The lot is exceptionally narrow. It is at
19 its narrowest point in the middle 12 feet wide.
20 Regulations of parking space are between seven to nine
21 feet wide, and a corridor by building code would need
22 to be three feet wide, and therefore it's physically
23 impossible to place a parking spot on this property.

24 The undue and particular difficulty to the
25 owner would be the inviability of creating a new

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1 structure in place of what is now a toxic mold
2 infested one-story liquor store that has been vacant
3 and abandoned for more than two years. It is our
4 intention to, in its place, create two new residential
5 units.

6 The third reason is that it does not
7 compromise the spirit of the zoning regulation in that
8 compliance with the zoning regulation would require a
9 net negative of one parking space to the public,
10 whereas a variance would allow the existing number of
11 public spaces to remain.

12 CHAIRPERSON GRIFFIS: Good. Thank you
13 very much.

14 MR. SHEM: Thank you.

15 CHAIRPERSON GRIFFIS: Very well said and
16 succinct and direct.

17 So let's start from the last and go back
18 to the beginning. When you say one net parking, so if
19 you did a curb cut, you would remove a street parking
20 space in order to get in there and then you would
21 provide a parking space, and what you actually started
22 with saying is you're going to remove a public access
23 parking and provide a private one. And even if you
24 did that, conceivably the lot is not wide enough to
25 park it, access it, and get into the building or

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1 somehow get by it in the building if you had a rear
2 portion and a front portion.

3 MR. SHEM: That is correct. The only
4 access to the building is from the front side and the
5 lot narrows --

6 CHAIRPERSON GRIFFIS: How did that ever
7 happen?

8 MR. SHEM: That's a good question. It is
9 the sort of last perpendicular lot to 11th Street, and
10 then the ones on Lamont cut into the lot itself.

11 CHAIRPERSON GRIFFIS: Interesting.

12 MR. SHEM: There is already an easement
13 over the back of the property for access to those
14 residents on Lamont Street; and therefore the property
15 itself is severely compromised already.

16 CHAIRPERSON GRIFFIS: That easement
17 actually goes at the rear and it runs parallel or
18 essentially parallel to 11th Street.

19 MR. SHEM: Yes, sir.

20 CHAIRPERSON GRIFFIS: But what is strange
21 is, what I was trying to -- looking at your site plan,
22 if you take the 11th Street, which is your 17-foot
23 distance, right, that's that wide, and actually -- and
24 then the rear is 18.31 -- let me just point you to
25 what I'm talking about. Does this corner, which is

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1 going to be the south-whatever corner on 11th Street,
2 the south corner, --

3 MR. SHEM: Yes, sir.

4 CHAIRPERSON GRIFFIS: -- does it align
5 with that, the rear corner if you brought off of that,
6 if it was just running directly on -- do you see that
7 wall? If it was directly on -- do you understand my
8 question?

9 MR. SHEM: I understand it. It does
10 appear, if you were to connect the two lines, it would
11 create a straight line, yes, sir.

12 CHAIRPERSON GRIFFIS: But doesn't it clip
13 the back corner?

14 MR. SHEM: Doesn't it clip the back
15 corner?

16 CHAIRPERSON GRIFFIS: Yes. If you carry
17 that line all the way back as if this were a
18 rectangular site, so you have the property line, aa
19 property line, and you run your property lines right
20 back, --

21 MR. SHEM: Yes, sir.

22 CHAIRPERSON GRIFFIS: -- or does the back
23 rear actually kind of flange out?

24 MR. SHEM: I'm sorry, I don't have the
25 absolute particulars of it, but I do believe that it

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1 appears as though there is maybe a marginal flare at
2 the rear.

3 CHAIRPERSON GRIFFIS: Yes. Actually, it's
4 fascinating. And the whole point of that 5.4, that
5 cut-in where your building is setting in, that's
6 actually the edge of your property?

7 MR. SHEM: Yes, sir.

8 CHAIRPERSON GRIFFIS: Because the other
9 lot, which is oddly shaped, it cuts into that. So you
10 don't have this rectangular; you really have a lot
11 that's shaped like your building footprint --

12 MR. SHEM: Exactly.

13 CHAIRPERSON GRIFFIS: -- is the bottom
14 line.

15 MR. SHEM: It dictated the shape of the
16 building itself, yes, sir.

17 CHAIRPERSON GRIFFIS: Okay. And, you
18 know, outside of the uniqueness of the shape and the
19 fact that it doesn't access even in a row in a block
20 that doesn't access the alley, the practical
21 difficulty of accessing it just based on that is
22 fairly insurmountable.

23 MR. SHEM: Yes, sir.

24 CHAIRPERSON GRIFFIS: I mean, you can't
25 drive into the back of this.

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1 MR. SHEM: No, you cannot.

2 CHAIRPERSON GRIFFIS: I see.

3 MR. SHEM: May my associate introduce
4 himself if he should choose to make a case?

5 CHAIRPERSON GRIFFIS: Oh, sure.

6 MR. VINSON: My name is Charles Vinson.
7 I'm the sort of project architect on this project.

8 CHAIRPERSON GRIFFIS: Sort of? What does
9 that mean? You kind of do it when you like?

10 MR. VINSON: I'm also the project manager,
11 so I do a bit of everything.

12 CHAIRPERSON GRIFFIS: I see. Good. Okay.
13 Other questions from the Board?

14 VICE CHAIRPERSON MILLER: I just have one
15 basic question of clarification. I think Office of
16 Planning stated that it's difficult to locate a
17 parking space on your property, and I think I heard
18 you say it's impossible. Can you just address that?
19 Is it impossible or is it just very difficult?

20 MR. SHEM: Right. It's our understanding
21 that it is against regulations to provide a parking
22 space between the building line and the property line,
23 and as such, the parking space would need to be more
24 towards the center of the property, at which point the
25 lot is only 12 feet wide.

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1 Chuck, if you could speak to the
2 regulation of the parking sizes and to the width of
3 the building and the party walls.

4 MR. VINSON: Well, the residential -- you
5 guys know this better than I do -- residential parking
6 width is seven feet. That would only leave about five
7 feet of free space to enter the building, and the
8 building would be back toward the rear, which would
9 actually be in the rear yards of the neighbors rather
10 than the building being adjacent to the neighbors'
11 buildings.

12 MR. SHEM: It's my understanding that it's
13 seven feet, plus a three-foot corridor, plus the
14 existing or the exterior wall structure -- those add
15 up to greater than 12 feet. By code, a corridor would
16 need to be three feet wide, plus building
17 construction, plus exterior wall, so our understanding
18 is that if you were to provide a seven-foot-wide
19 parking space, there would be no passage from front to
20 back.

21 CHAIRPERSON GRIFFIS: Okay. I don't know
22 where the seven-foot dimension is coming from, but the
23 issue which she was going to is, you know, is it
24 impossible or is it just very difficult? I think it
25 lends more towards impossible because not only is it

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1 the fact of -- and I think Office of Planning brought
2 this up fairly well -- you're not allowed to park in
3 the front of your building. That is what it's trying
4 to preclude in many ways. So you're either going to
5 put it inside that building -- you're sort of putting
6 it inside that building, you're driving straight into
7 it, and the access in -- I can pull out all these
8 dimensions which I don't know off the top of my head,
9 but I think your minimum is going to be 12 feet. So
10 if you start taking up that driveway and that access
11 in the door and a car, you're parking on your first
12 floor. I think it's getting to be a bit -- because
13 the whole point of what I think we ought to look at,
14 and I think that's what the regulations are set for,
15 is it would be accessed through the rear, and based on
16 the fact that there is no rear access, it seems to be
17 a bit of an impossibility or an impossibility if we
18 want to just -- okay.

19 Any other questions or clarifications?

20 COMMISSIONER HILDEBRAND: Just as a point,
21 though, there are many examples of in-fill housing
22 around the city that provide parking garages as part
23 of their front's facade elements. It certainly was a
24 standard thing in the '60s and early '70s.

25 CHAIRPERSON GRIFFIS: Yes.

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1 COMMISSIONER HILDEBRAND: Not one of my
2 favorites, might I add, but I think it does speak to
3 the -- in some cases it is possible, perhaps not
4 desirable.

5 CHAIRPERSON GRIFFIS: Yes. I can
6 understand that. It's somewhat possible. But that's
7 the beauty of Washington, D.C. laid out with alley
8 systems in our row dwellings, is that we can afford to
9 have the street parking. I mean, that's where it goes
10 to, too, is if parking is the issue, which I'm certain
11 it is -- we know, we have seen enough cases, and let's
12 be frank, I live in this neighborhood -- the demand of
13 the parking, as all across the city, is severe, and if
14 we remove one or possibly even two depending on the
15 location of this just to provide one private, it flies
16 in the face of, one, probably the community
17 fundamentally, but also what the intent and purposes
18 of the regulations are.

19 Okay. Anything else for the applicant at
20 this time? Any other questions? Clarifications?
21 Yes, Mr. Hildebrand.

22 COMMISSIONER HILDEBRAND: Just as long as
23 you don't mind me straying a little bit.

24 CHAIRPERSON GRIFFIS: No.

25 COMMISSIONER HILDEBRAND: I see that the

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1 existing structure -- is that built on the property
2 line? The face of the liquor store, is that on the
3 property line now?

4 MR. SHEM: Yes, sir.

5 COMMISSIONER HILDEBRAND: So where is your
6 new building falling relative to -- it's right on the
7 property line; is that correct? So you're actually
8 projecting in front of these adjacent houses slightly?

9 MR. VINSON: Slightly.

10 COMMISSIONER HILDEBRAND: Slightly?

11 MR. VINSON: But it is set back on the
12 left-hand side to recognize that there is an adjacent
13 neighbor where the bay is located to the left.

14 COMMISSIONER HILDEBRAND: Where the bay
15 is.

16 MR. VINSON: Yes.

17 COMMISSIONER HILDEBRAND: So the property
18 line isn't back where --

19 CHAIRPERSON GRIFFIS: At the row dwelling.

20 COMMISSIONER HILDEBRAND: -- at the face
21 of the wall of the building without the bay on your
22 neighbor's property.

23 MR. VINSON: That's correct. It's
24 forward.

25 COMMISSIONER HILDEBRAND: It's forward.

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1 Wow. That's very unique.

2 CHAIRPERSON GRIFFIS: It's interesting.
3 But isn't the existing building on your site aligned
4 with the adjacent-to-the-south commercial building?

5 MR. VINSON: Yes, it is.

6 CHAIRPERSON GRIFFIS: See, that's what is
7 funny. It's almost like they envisioned -- who knows
8 when this was built? -- they envisioned the commercial
9 buildings coming up, and then someone bought it and
10 built the row dwellings and set them back.

11 COMMISSIONER HILDEBRAND: Yes. It's
12 unique. Thank you.

13 CHAIRPERSON GRIFFIS: Good.

14 Anything else? Any other follow up?

15 (No response.)

16 CHAIRPERSON GRIFFIS: We're going to move
17 on to the Office of Planning and government reports
18 and we will come back to you for any closing remarks
19 and any other comments unless you have something right
20 away.

21 MR. SHEM: I would just like to comment on
22 the support of the various agencies that we have.

23 CHAIRPERSON GRIFFIS: Yes. Let's run
24 through it. If we miss anything, you can bring it to
25 our attention.

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1 A very good afternoon to the Office of
2 Planning that is with us today. Hello there.

3 REPORT FROM THE OFFICE OF PLANNING

4 BY STEVEN MORDFIN

5 MR. MORDFIN: Good afternoon, Chairman and
6 members of the Board. I'm Steven Mordfin with the
7 Office of Planning.

8 The subject property is unusual in that it
9 has no alley access, it is only 17 feet wide at the
10 front, narrowing to approximately 12 feet in the
11 center. If one parking space were provided, the
12 resulting curb cut would result in the loss of one
13 on-street parking space with no net gain in parking.
14 The location of one parking space onsite within either
15 the side or the rear yard as required would be
16 difficult because the remaining lot left over for the
17 building would be approximately three feet including
18 the exterior walls. Therefore, the Office of Planning
19 has determined that the subject property is unique in
20 that it would be a peculiar and practical difficulty
21 to the applicant to provide one off-street parking
22 space on site. The Office of Planning recommends that
23 the application be approved as submitted by the
24 applicant.

25 That concludes the presentation from the

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1 Office of Planning.

2 CHAIRPERSON GRIFFIS: Good. Thank you
3 very much, Mr. Mordfin.

4 Are there questions from the Board?

5 Clarification?

6 (No response.)

7 CHAIRPERSON GRIFFIS: Excellent report and
8 the graphics and the aerials as always are very
9 helpful in our understanding them for the deliberation
10 in this case.

11 Is there anything in follow up from the
12 Board?

13 Does the Board have any cross-examination
14 of the Office of Planning?

15 MR. SHEM: No, sir.

16 CHAIRPERSON GRIFFIS: Very well. Let's
17 move on. This is not located in a historic district;
18 is that correct?

19 MR. SHEM: Yes, sir.

20 CHAIRPERSON GRIFFIS: It is located in the
21 ANC-1A, which has submitted in recommending approval
22 of the application, Exhibit Number 25. Is there a
23 representative from ANC-1A present here today?

24 (No response.)

25 CHAIRPERSON GRIFFIS: Not noting any

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1 present before us, that's all I have for the
2 government reports attendant to this application
3 unless you are aware of any others.

4 MR. SHEM: Councilmember Jim Graham, the
5 councilmember for that area, submitted a letter in
6 support of this variance application.

7 CHAIRPERSON GRIFFIS: That's right. We
8 did have that, didn't we? What was the second one you
9 said? Councilmember Graham, which is Exhibit Number
10 22 -- did you say another one?

11 MR. SHEM: No, sir. Councilmember Graham.

12 CHAIRPERSON GRIFFIS: Okay. Excellent.
13 We do have that and the Board has read it. Obviously
14 very supportive, the councilmember is, of your
15 application. I might say a quite thorough letter that
16 lays out the entire application and the requirements
17 for it, not something we often see, although we do
18 often see that from Councilmember Graham, who is
19 obviously very thoroughly and factually based in his
20 decisions on what to support and not to.

21 Let me also make note for the record as we
22 go back in -- is there any other -- I don't know what
23 this is that was just handed to me, so why don't you
24 read it and figure it out, tell me what it is.

25 I want to make note of your application

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1 and submission as somewhat of quite a substantial
2 parking analysis, the on-street parking. I know the
3 Board went through it. It's not something we often
4 see from a non-bank of attorneys with tons of traffic
5 engineers. So you went out there and physically
6 counted this up.

7 Actually, it was very informative in terms
8 of speaking to it. It probably would have -- well, I
9 won't say that. Okay. Anything else?

10 What was this that we were just handed?

11 VICE CHAIRPERSON MILLER: Well, I haven't
12 had a chance to read the whole thing, but the subject
13 -- well, it's submitted by residents of Columbia
14 Heights, and some of those residents are two of the
15 people who applied for party status, Sally Tyler and
16 Flora Bravo and about five other individuals who said
17 that the ANC, it sounds like, didn't properly contact
18 them with respect to their meeting and they are
19 opposed to the BZA granting this parking variance --

20 CHAIRPERSON GRIFFIS: Gotcha. Good. I
21 note in here --

22 VICE CHAIRPERSON MILLER: -- until
23 off-street parking has been established for community
24 residents.

25 CHAIRPERSON GRIFFIS: They must live in a

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1 building that doesn't have parking. They have an
2 accumulated 40 years of residency in Columbia Heights.
3 There are 30 people that signed this thing. Okay. I
4 think that's in there already. We have all that.

5 Anything else, then? Everybody had time
6 to look at that? Did you get a copy of this?

7 MR. SHEM: Yes, I did. I would like to
8 address it, if I may.

9 CHAIRPERSON GRIFFIS: Excellent. Why
10 don't we do that now.

11 MR. SHEM: It says the residents voiced
12 opposition at the ANC commission hearing, and that was
13 true, there was initial opposition. But once the
14 matter was fully explained, the ANC took their que
15 from the residents in attendance and voted unanimously
16 to support it. I believe that there are some
17 technicalities of this request that are technical in
18 nature and therefore may be counterintuitive, and it
19 was our understanding that once this issue was
20 explained before the community residents, they voiced
21 their support and the ANC in turn voted unanimously.

22 They also object to the fact that there
23 was not sufficient notification. My associate
24 hand-delivered notices within sufficient time
25 notifying them of the meeting and the issue before the

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1 ANC commission within the required residence radius
2 around the subject property.

3 CHAIRPERSON GRIFFIS: Excellent. Okay.
4 It's not something the Board hasn't heard before, but
5 to make two clarifying points, one, we don't have any
6 oversight or jurisdiction over the ANC and how they
7 conduct business and whether there is proper
8 notification. But, more importantly, we have very
9 strict notification, which you are obviously aware of
10 because you have complied with all of them, and that
11 is the mailing to the property owners within a
12 200-foot radius and also posting the property, each of
13 which has been documented has done and maintained.
14 That notification and proper notification is important
15 and we obviously just have jurisdiction over our own
16 requirements.

17 So, that being said, it has been met. We
18 note the objection. I think it is true -- you know,
19 sometimes you get into these things and we're looking
20 at these tests and you were delicate in your statement
21 of it, but sometimes it flies in the face of common
22 sense what you're having to and how you're having to
23 prove it or the tests that we put things through when
24 one would say this is kind of easy. You know, well,
25 it does get to be somewhat technical.

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1 I think this -- I don't think we need to
2 spend a lot more time on this. It seems almost
3 nonsensical to start talking about removing or doing
4 a curb cut, which I, you know, quite frankly would
5 wonder whether you would be able to get, let alone if
6 you did what the impact on the street would be.

7 Okay. Anything else?

8 Yes, Ms. Miller.

9 VICE CHAIRPERSON MILLER: Well, separate
10 from the merits, I just want to say on this issue of
11 the ANC, they don't indicate how they did provide
12 notice in their resolution and they don't say what
13 their quorum is and they don't say what their vote
14 was; they just say that they voted to approve it. So
15 we do have to decide whether to give it great weight.

16 CHAIRPERSON GRIFFIS: That's true.

17 VICE CHAIRPERSON MILLER: So in this case,
18 I would say it really doesn't rise to the level of
19 great weight.

20 CHAIRPERSON GRIFFIS: Right. That's an
21 excellent point. There is part of our requirements
22 that we do have jurisdiction over the ANC, and that's
23 how they file their reports to us in order to be
24 granted great weight, which, of course, is a legal
25 standard and which they always want to be interpreted

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1 as Ms. Miller has gone through a few of the
2 requirements under -- what is it? -- 3115 that they
3 have to comply with, and they don't meet that to be
4 granted the great weight.

5 But I think it's fairly self-explanatory,
6 the position of the ANC even if it's not granted great
7 weight, and frankly, you know -- there it is. They
8 also don't lay out all the substances and tests in the
9 case, but I think we can take it in under our
10 advisement even if it's not granted great weight,
11 which I would agree with you, it didn't meet that
12 threshold to be granted.

13 Mr. Etherly.

14 MEMBER ETHERLY: Mr. Chair, just a very
15 quick point of clarification, definitely not a big
16 deal and nothing to spend a whole lot of time over but
17 perhaps just as a question. I have seen ANC reports
18 that previously had made reference to a regularly
19 scheduled meeting and then used that phrasing of
20 "proper notice."

21 So just from a guidance standpoint for any
22 of our ANC commissioners that may be anxiously
23 watching our proceedings, as we know so many people
24 do, is it the case that there needs to be greater
25 specificity with regard to the description of the type

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1 of notice, or if you say it's a regularly scheduled
2 meeting and proper notice is given, is there a
3 suggestion that that is not sufficient for great
4 weight?

5 CHAIRPERSON GRIFFIS: Well, I think this
6 one fails --

7 MEMBER ETHERLY: I mean, it fails on a
8 couple of other pieces.

9 CHAIRPERSON GRIFFIS: Right. Oh, I see.

10 MEMBER ETHERLY: But just with regard to
11 that language.

12 VICE CHAIRPERSON MILLER: I mean, we could
13 interpret "regularly scheduled meeting" in that, you
14 know, people have notice because if they have their
15 whole schedule set out and that was at the regular
16 time. In this case, notice has become an issue.
17 These residents are saying the ANC didn't tell them,
18 and we don't have information to show that they really
19 did.

20 MEMBER ETHERLY: Okay.

21 VICE CHAIRPERSON MILLER: If this were the
22 only piece, then maybe we would say, you know, we
23 could waive that. And great weight really goes to
24 addressing the issues with particularity that they
25 raise.

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1 MEMBER ETHERLY: Right.

2 VICE CHAIRPERSON MILLER: They don't
3 really raise issues in here that we have to address
4 anyway. Basically we see this as indicating the
5 support of the ANC.

6 MEMBER ETHERLY: Okay. Thank you, Mr.
7 Chair.

8 Thank you.

9 CHAIRPERSON GRIFFIS: Thank you very much.
10 It is true, the substance is really what we're getting
11 to and then the mere technicalities, which should be
12 fairly standard, but there it is.

13 Mr. Hildebrand, anything?

14 Mr. Mann?

15 MEMBER MANN: No.

16 CHAIRPERSON GRIFFIS: Good. I think we
17 have covered everything. Let me ask is anyone here
18 present to give testimony today either in support or
19 in opposition to Application 17255?

20 (No response.)

21 CHAIRPERSON GRIFFIS: Not noting anyone
22 storm the table at this time, we can go to the
23 applicant for any closing remarks or summations that
24 you might have.

25 MR. SHEM: Thank you very much. I believe

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1 that the case is self-explanatory and that we have
2 given it sufficient time already. We just ask for
3 proper understanding and hopefully acceptance of our
4 variance application. Thank you very much.

5 CHAIRPERSON GRIFFIS: Okay. Thank you
6 very much. What is the scheduled date of
7 construction?

8 MR. SHEM: We are awaiting resolution of
9 this matter, sir.

10 CHAIRPERSON GRIFFIS: Good. I think this
11 is prepared to go forward. Unless there is any
12 objection from Board members, I would move approval of
13 Application 17255 of 3DG Delta LLC. That would be for
14 the variance from the off-street parking requirements
15 under Section 2101.1, which happens to be one for each
16 two units, or at least one for the required flat
17 that's being proposed, and that would allow this
18 two-family dwelling to be constructed at 3313 11th
19 Street, Northwest, and ask for a second.

20 MEMBER MANN: Second.

21 CHAIRPERSON GRIFFIS: Thank you very much.

22 The motion before us has been seconded.
23 I think it's very clear and we will just restate, of
24 course, the variance test has to go to the uniqueness,
25 practical difficulty out of that uniqueness, whether

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1 this would impair the intent and integrity of the zone
2 plan and whether it would, in fact, be against the
3 public good.

4 Let's start with uniqueness. There are
5 numerous aspects of the uniqueness, but I think the
6 size and shape and lack of alley access of a row
7 dwelling or row lot, which is somewhat more analogous.

8 You know, the other aspect to this which
9 is a uniqueness, and I'm not sure practical difficulty
10 comes out, which is in the case but wasn't really
11 fleshed out today, is that it's in a commercial zone.
12 But that being said, based on the unique aspects of
13 shape and also the non rear-alley access and the
14 diminished size, the practical difficulty of getting
15 access, vehicular access into the site to provide
16 required parking, which would be 9 by 19, is my
17 understanding of the regulations, seems to be close to
18 if not impossible.

19 But certainly a practical difficulty in
20 looking at this for our purposes of the test
21 requirement and whether it would impair the intent and
22 integrity of the zone plan goes to, in fact, being
23 located in a C-2-A area and providing a two-family
24 dwelling certainly doesn't go against what is
25 allowable use, and in terms of the diminished parking

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1 requirement for the C-2-A, the impact can be measured
2 on certain levels, but I don't think it, in fact,
3 impairs the zone plan or map.

4 The public good -- you know, it was
5 briefly illustrated in the oral testimony whether
6 allowing this to proceed, which isn't exactly where it
7 should go in terms of our looking at the test -- well,
8 let's start with the basics, then. Whether, one,
9 require parking that isn't there now -- it's replacing
10 a commercial establishment which probably would have
11 generated more vehicular trips, in my understanding of
12 commercial, as opposed to a two-family dwelling, and
13 then to look at whether it would be not for the public
14 good to not require an addition of parking, that seems
15 to really be taking too much time to talk about a
16 simple matter. And the replacement of this existing
17 structure I think actually goes to the more positive
18 aspects of this, and that's all I need to say.

19 I will open it up for others of the
20 deliberation of the motion that has been seconded.

21 Very well. If there is nothing further of
22 the Board, we have a motion that has been seconded.
23 I ask for all those in favor to signify by saying aye.

24 (Chorus of ayes.)

25 CHAIRPERSON GRIFFIS: Opposed?

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1 Abstaining?

2 (No response.)

3 CHAIRPERSON GRIFFIS: Ms. Bailey, why
4 don't we record the vote.

5 MS. BAILEY: Thank you, Mr. Chairman.

6 Mr. Mann, did you second the vote?

7 MEMBER MANN: I did.

8 MS. BAILEY: Thanks.

9 The Board has voted 5-0-0 to approve the
10 application. Mr. Griffis made the motion; Mr. Mann
11 second; Mrs. Miller, Mr. Etherly, and Mr. Hildebrand
12 are in agreement. And we are doing a summary order,
13 Mr. Chairman?

14 CHAIRPERSON GRIFFIS: I believe, unless
15 there is any objection from the Board members, we can
16 waive our regulations and issue a summary order on
17 this.

18 MS. BAILEY: Thank you, sir.

19 CHAIRPERSON GRIFFIS: Thank you very much.

20 Thank you all very much. Good luck.

21 MR. VINSON: Thank you.

22 MR. GOLDMAN: Thank you.

23 MR. SHEM: Thank you very much, ladies and
24 gentlemen.

25 CHAIRPERSON GRIFFIS: Have a good

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1 afternoon.

2 Let's move on, then to Application 17253,
3 Ms. Bailey, when you are ready.

4 MS. BAILEY: Absolutely, sir.

5 APPLICATION OF D.C. FIRE AND EMS DEPARTMENT

6 17253 ANC-8A

7 MS. BAILEY: That's the application of the
8 D.C. Fire and Emergency Medical Services Department
9 pursuant to 11 DCMR 3103.2 for a variance from the use
10 provisions under Subsection 320.3, a variance from the
11 side yard requirements under Section 405, a variance
12 from the nonconforming structure provisions under
13 Subsection 2002.6, a variance from the limitation on
14 the number of buildings that can occupy a single lot
15 requirements under Subsection 3202.3, to allow
16 modernization, including renovation of an existing
17 building and the construction of a new building. This
18 is an Emergency Medical Services Department
19 application. The property is zoned R-3 District.
20 It's located at 2101 14th Street, Southeast, Square
21 5781, Lot 847.

22 Mr. Chairman, I read the application as it
23 was advertised; however, there has been a request for
24 some of the relief that was advertised to be
25 eliminated or reduced from this project, sir.

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1 CHAIRPERSON GRIFFIS: Good. Thank you.
2 And that's excellent clarification. Do we know
3 exactly what we're doing at this point? Let me have
4 you introduce yourselves and you can answer that
5 question.

6 MR. CYRUS: Good afternoon, Mr. Chairman
7 and members of the Board. I would like to introduce
8 myself and the gentlemen at the table with me.

9 CHAIRPERSON GRIFFIS: Good.

10 MR. CYRUS: My name is Ralph W. Cyrus,
11 Jr., and I'm the project manager for the Fire and
12 Emergency Medical Service. To my left is Chief
13 Richard Sterne; he's the planning officer for Fire and
14 EMS. Our designer is Mr. Phil Cooper from the firm of
15 Baker, Cooper & Associates.

16 CHAIRPERSON GRIFFIS: Excellent. And very
17 good afternoon. Good to see you again.

18 MR. CYRUS: Yes.

19 CHAIRPERSON GRIFFIS: Kind of. I guess
20 it's mixed blessings. Okay.

21 Do we know exactly the relief that you are
22 seeking? Are we looking at a side yard under Section
23 405, a nonconforming structure, 2002.6, and also the
24 special exception from parking?

25 MR. CYRUS: Yes.

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1 CHAIRPERSON GRIFFIS: That's it, right?

2 MR. CYRUS: Yes, sir.

3 CHAIRPERSON GRIFFIS: Okay. And you know
4 -- I think -- I have to say, in looking at this, I
5 mean, we glean a little bit out of the whole
6 background as we look through all these applications
7 and the folders that are actually finally delivered to
8 us, and I want to just thank the Office of Zoning for
9 their help in getting a lot of these clarified, these
10 issues, which is complicated, and also the Office of
11 Planning, which I think weighed in quite extensively
12 on that.

13 To that point, I think we're at a level at
14 which I have a firm understanding, and I have polled
15 the Board -- they are all in concurrence with that.
16 I think we're of the amenable mind of having you stand
17 on the record if you would like.

18 MR. CYRUS: Okay.

19 CHAIRPERSON GRIFFIS: If there is
20 anything, I will give you the opportunity if you want
21 to point out any aspects that you think we need to
22 focus on. Otherwise, I think we can move through this
23 pretty quickly.

24 MR. CYRUS: Okay.

25 CHAIRPERSON GRIFFIS: Good.

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1 MR. CYRUS: Thank you, sir.

2 CHAIRPERSON GRIFFIS: Are there any
3 questions that arise from the Board at this point?

4 (Pause.)

5 CHAIRPERSON GRIFFIS: All right. We have
6 another clarification point, and that is, is a
7 variance of number of buildings also being sought,
8 3202.3?

9 MR. COOPER: Mr. Chairman, my name is
10 Philip Cooper again.

11 CHAIRPERSON GRIFFIS: Yes.

12 MR. COOPER: Yes, there is a variance for
13 the number of buildings that are on one site. The two
14 structures that we're concerned about were constructed
15 in the mid '80s, I believe -- I'm sorry -- mid '60s,
16 and consequently this was before the 1990 zoning
17 requirements.

18 CHAIRPERSON GRIFFIS: Right. Yes, there
19 were a couple of things -- and that's an interesting
20 point that you bring up, and that's why we have kind
21 of gone back and forth. I mean, you're looking at
22 buildings that didn't come in under zoning. All of a
23 sudden they do come in under zoning, but they are
24 existing structures and they are still the same use.

25 MR. COOPER: Yes.

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1 CHAIRPERSON GRIFFIS: So that's why
2 fundamentally it first came in with a use variance,
3 because, my gosh, how could a fire department be
4 allowed anywhere, right? I mean, especially in a
5 residential zone. And I have gotten great word, of
6 course, that the Zoning Commission is dealing with
7 that expeditiously if it hasn't already been passed,
8 so that won't be an issue as we move forward.

9 Okay. Well, for total clarification, we
10 will just take down -- actually, let me just get
11 everyone joined in here and say a very good afternoon
12 to the Office of Planning, who is with us, who has
13 done a good job, and I think we can move right into
14 having them part of this discussion. Let's walk down
15 the exact requirements of relief, and we're looking at
16 the side yard and the limitation of number of
17 buildings under 3202.3 at this point; is that correct?
18 Is that the Office of Planning's understanding?

19 MS. THOMAS: Yes. Good afternoon, Mr.
20 Chairman, members of your Board. I'm Karen Thomas
21 with the D.C. Fire's application. If you would like,
22 I will just clarify what we --

23 CHAIRPERSON GRIFFIS: Yes.

24 REPORT FROM THE OFFICE OF PLANNING

25 BY KAREN THOMAS

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1 MS. THOMAS: Okay. The applicant had
2 requested a variance, filed a variance request for a
3 side yard, nonconforming structures provisions under
4 Subsection 2002.6, and special exception relief to
5 allow reduction in the number of permitted parking
6 spaces.

7 Based on information in the record, we
8 noticed that the Office of Zoning informed the
9 applicant that additional relief was required, and
10 subsequently they requested use provisions under
11 Subsection 320.3 and the limitation on number of
12 buildings that can occupy the single lot under
13 Subsection 3202. But this was based on the belief
14 that a new building would be constructed; however, the
15 development proposal does not include another building
16 on the lot but just a second story to the existing
17 fire station. The lot has another building which
18 accommodates the Anacostia Health Center, and all are
19 owned by the District of Columbia.

20 To clarify, then, we discussed this with
21 the applicant and the Office of Zoning, and we believe
22 that a relief should be variance relief from the side
23 yard requirement under Section 405, variance from the
24 limitation on the number of buildings that can occupy
25 a single lot under Section 3202, and special exception

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1 from the parking requirement, and we dropped Section
2 2002.6, which we believe no longer applied since no
3 new structure was being considered, and the use
4 provision under Subsection 320.3 since, again, no
5 building was being built. It was not a new building;
6 it was just a second-story addition.

7 Since the zoning regulations do not
8 currently address municipal uses and the site
9 conditions were created prior to the municipal
10 regulations, which now require government properties
11 to conform to the District's zoning regulations,
12 municipal uses or nonconforming uses under the use
13 variance would be required for any new facility, and
14 as you understand, the Zoning Commission is
15 deliberating on a proposed rulemaking to permit
16 municipal uses as a matter of right in all zoning
17 districts.

18 To address the test, we believe that the
19 preexisting location of the subject building, which
20 already encroaches three feet into the south-facing
21 side yard, the shape of the lot, and the municipal
22 regulation, which until 1990 exempted District
23 properties from current land use requirements -- land
24 use requirements, rather -- creates an exceptional
25 condition of the property. So a practical difficulty

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1 would arise in attempting to modernize the building,
2 which was constructed prior to such regulations.

3 The flag-shaped lot is not wide enough
4 where the building is currently located to accommodate
5 any practical addition that would not violate the side
6 yard requirements. Inability to increase the site's
7 buildable area as proposed would cost the Fire
8 Department 7,400 square feet of expansion space for
9 necessary modernization.

10 As it is presented, the building's
11 renovation would not further reduce the width of the
12 existing side yard to accommodate the second-story
13 addition. In addition, the location of other existing
14 structure on the lot is also a practical difficulty as
15 it conflicts with the current zoning regulations,
16 including Section 3202.3.

17 This building is a public facility which
18 currently serves the community and it cannot be
19 demolished, nor is it proposed for demolition to
20 satisfy the limitation prescribed by this section. So
21 grant of the area variances would not cause
22 substantial detriment to the public good since the
23 project results in an increase in public safety and
24 modernization of a facility that has been in place for
25 36 years. We believe that renovation and

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1 modernization of the existing structure would enhance
2 the company's ability to accommodate women at the
3 facility.

4 Further, the second-story addition's size
5 and scale respects the surrounding neighborhood as it
6 is well within the height limit prescribed for the
7 zone and no shadows would be cast on any neighboring
8 property due to the second-floor addition; therefore,
9 we have no objection to this addition to the
10 preexisting structure which prior to 1990 was not
11 subject to current zoning regulations.

12 With respect to the parking, the site
13 currently provides 16 on-site parking spaces, and
14 based on the proposed gross building area of over
15 19,000 square feet, it would require 33 spaces.
16 Section 2108 allows the Board to reduce the number of
17 required spaces to no more than 50 percent. There is
18 no objection to this reduction since there is no
19 additional space in the parking lot's current location
20 to accommodate the requirement of 33 spaces.

21 The station's parking area is not
22 accessible to the other parking lot which serves the
23 Anacostia Health Center since it is separated by a
24 six-foot-high wooden fence. The applicant has stated
25 to the Office of Planning that 16 spaces has proven

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1 sufficient for the department's needs, and according
2 to staff at Engine Company 15, the station observes a
3 24-hour staff rotation of approximately 16 staff
4 persons per shift where each shift starts and ends at
5 seven a.m. We have no further information on the
6 number of employees who drive to the location;
7 however, we observed that there is ample on-street
8 unrestricted parking in the immediate vicinity of the
9 fire station.

10 For these reasons, we have no objection to
11 the variance relief and the special exception for the
12 parking reduction, and we would recommend approval of
13 the application. Thank you.

14 CHAIRPERSON GRIFFIS: Thank you very much.

15 MS. THOMAS: Thank you.

16 CHAIRPERSON GRIFFIS: Excellent report.

17 Any questions from the Board?

18 COMMISSIONER HILDEBRAND: I did have one
19 question just to clarify. In building out and
20 modernizing the space, you are not envisioning adding
21 staff to the firehouse, so the same 16 -- 16 will
22 still be the current count of employees?

23 MR. STERNE: Right. The number -- I'm not
24 sure if 16 is right offhand, but the number won't
25 change. The driving force behind this is this station

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1 was originally designed to hold a number of units, and
2 it still holds them.

3 The unit that's driving the space needs is
4 Rescue Squad Number 3, which is a heavy-duty rescue
5 squad. They also perform the department's collapsed
6 rescue functions, urban search and rescue, and as the
7 requirements for technical rescue equipment and
8 training have increased, as the threat level has
9 increased, the homeland security interest that we
10 never had to worry about too much before, or if we
11 did, we didn't know it, they have created a huge
12 garage space and storage space jam in the station.

13 COMMISSIONER HILDEBRAND: Right.

14 MR. STERNE: So the driving force here is
15 to get more garage space. So what they are doing is
16 taking what is existing living space on the north side
17 of the station, converting that into a garage, and
18 then adding living space above --

19 COMMISSIONER HILDEBRAND: Right.

20 MR. STERNE: -- with no net change in
21 units or anything like that. So that's where we are.

22 COMMISSIONER HILDEBRAND: All right.

23 CHAIRPERSON GRIFFIS: Good. I think we're
24 clear. I mean, clearly that was living space where
25 the garage doors are. That's got to move somewhere

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1 because that equipment has got to come in because of
2 the expanding equipment that is actually used and
3 required, and a lot of that is actually in the
4 submission, so --

5 MR. STERNE: We haven't figured out how to
6 get those vehicles parked on the second floor yet, so
7 we've got to put it downstairs.

8 CHAIRPERSON GRIFFIS: Well, we were
9 discussing that -- maybe helicopters. Nonetheless,
10 until that technology comes, I think it's very clear.

11 You know, what's interesting about it,
12 too, is you're here for the parking reduction, which
13 is a special exception, and actually, just talking
14 briefly with the Zoning Commissioner, I was asking
15 whether the Zoning Commission in their text amendment,
16 which is making fire stations matter-of-right uses in
17 residential zones, whether they looked at the actual
18 parking table, because what you are under is all other
19 structures in the parking table, which is the highest
20 -- well, not the highest, but one of the highest,
21 because we don't know what it is. If we can't define
22 it, it's got to be pretty awful. So, you know, one
23 space for every 600 square feet is what your count is
24 coming out to, and even more so with this in
25 particular. Nothing is changing, and actually you are

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1 providing these equipment parking, That square
2 footage that could be required parking in our zoning
3 regulations obviously is taken up by non-standard-size
4 equipment, so you're kind of caught each way, because
5 it is kind of ironic that they are providing parking
6 garages and yet they don't have anything to count
7 toward the parking requirement.

8 Okay. I think I understand whether that
9 made any sense at all or not. Any other questions,
10 clarifications at this time? Anything from the Office
11 of Planning? Ms. Miller?

12 VICE CHAIRPERSON MILLER: Well, for us, I
13 think it appears to me that the Fire Department may
14 not have applied for the special exception relief, and
15 I'm wondering if we need to amend the application to
16 reflect that application for special exception relief.

17 CHAIRPERSON GRIFFIS: I think we can amend
18 our application in the clarification that we've just
19 gotten and looking at this special exception. That's
20 all you're asking, right?

21 VICE CHAIRPERSON MILLER: Yes. Right.

22 CHAIRPERSON GRIFFIS: Good.

23 VICE CHAIRPERSON MILLER: Just from a
24 procedural point of view that it needs to be amended
25 for us to grant it.

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1 CHAIRPERSON GRIFFIS: Excellent.

2 VICE CHAIRPERSON MILLER: Okay.

3 CHAIRPERSON GRIFFIS: So amended. Any
4 opposition?

5 (No response.)

6 CHAIRPERSON GRIFFIS: Very well, then.

7 Good point.

8 Okay. Anything else? Anything else we
9 need to cover or go over? Okay. Let's move on, then,
10 very quickly. We do have ANC-8A. Is the ANC member
11 represented? Oh, I'm sorry. I should have had you up
12 here before. A very good afternoon to you. Do you
13 want to come forward? Do you have any
14 cross-examination questions of the applicant or the
15 Office of Planning?

16 MS. HUDSON: No.

17 CHAIRPERSON GRIFFIS: Okay. If you
18 wouldn't mind, you can just state your name and
19 address for the record.

20 TESTIMONY BY LATESHA HUDSON, ANC-8A

21 MS. HUDSON: My name is Latesha Hudson,
22 Commissioner-Elect, and my address is 1849 Good Hope
23 Road, Southeast, Apartment 301.

24 CHAIRPERSON GRIFFIS: Excellent. Go
25 ahead.

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1 MS. HUDSON: Washington, D.C. 20020.

2 CHAIRPERSON GRIFFIS: Good. I assumed
3 that part as you're commissioner-elect. And then
4 congratulations to you, also.

5 MS. HUDSON: Thank you.

6 CHAIRPERSON GRIFFIS: Did you have a
7 statement you wanted to provide today?

8 MS. HUDSON: Yes. I just wanted to speak
9 on behalf of the ANC-8A that we support, we really do
10 support this project.

11 CHAIRPERSON GRIFFIS: You don't mind
12 having a fire department in your neighborhood?

13 MS. HUDSON: No, not at all.

14 CHAIRPERSON GRIFFIS: Indeed.

15 MS. HUDSON: Not at all.

16 CHAIRPERSON GRIFFIS: Good. Thank you
17 very much. Okay. Just a quick question. You stated
18 the resolution in terms of the ANC's support. Did you
19 provide one for the record, a written resolution? Do
20 you have anything to put in the record?

21 MS. HUDSON: No.

22 CHAIRPERSON GRIFFIS: Okay. Good. Thank
23 you very much. Before you leave, as
24 commissioner-elect, I'm going to require you to go
25 into the Office of Zoning, pick up our regulations

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1 that go to the ANC requirements for filing because it
2 will be very helpful for all the cases that are coming
3 in your neighborhood as you present in front of the
4 Board and makes it -- lays it out very easily. So
5 just to put into all the things you have to learn now
6 about being a commissioner, you can add that to it.

7 Okay. That being said, anything else?
8 Any other questions? Does the applicant have any
9 cross-examination questions of the ANC? Okay. Then
10 we will let it go.

11 I don't have any other government reports
12 attendant to this application. Is there anyone else
13 here, persons either in support or opposition to give
14 testimony?

15 (No response.)

16 CHAIRPERSON GRIFFIS: Not noting any, I
17 think we can move on. That's all I have in terms of
18 all the filings here. We will turn it over to you for
19 any closing remarks that you might have.

20 MR. CYRUS: I think we've summed it up
21 pretty well, you know, what we need and why we need
22 it, and as you said, I think some of the zoning text
23 changes that are before Mr. Hildebrand will make a lot
24 of this simpler as we go down the road, but for now,
25 we need to get it as a variance, so we appreciate all

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1 your time and effort in looking at it and hopefully
2 favorable consideration. Thank you.

3 CHAIRPERSON GRIFFIS: Good. Thank you all
4 very much.

5 I think I am prepared to move forward on
6 this today unless there is opposition from the Board,
7 and I would move approval of Application 17253. That
8 would be for the two variances as stated and amended
9 in this application from the side yard and also from
10 the limitation on number of buildings under 3202.3.
11 In addition, it would be for a special exception for
12 the reduction in parking requirements under 2101, and
13 I would ask for a second.

14 VICE CHAIRPERSON MILLER: Second.

15 CHAIRPERSON GRIFFIS: Thank you, Ms.
16 Miller.

17 I think the test has been fairly
18 straightforward and succinct on this in terms of the
19 uniqueness and the practical difficulty required on
20 the side yard just arising from -- which is
21 interesting that the use and all that has changed and
22 all that, but the use is really going to the demand of
23 the expand and the required addition to this, and as
24 we look at that in terms of the lot itself, where else
25 could it be accommodated? It seems based on the

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1 uniqueness of the building that's in existence and the
2 use of the building, that there is no choice and
3 obviously creates a practical difficulty in
4 maintaining a side yard on that aspect.

5 The variance from the limitation on the
6 number of buildings in a single lot is an existing
7 condition, and that condition is not changing, nor is
8 it, in fact, being increased or compounded but will
9 remain the same.

10 Then the special exception for parking --
11 I think we have put that one through the wringer in
12 talking about the aspect of obviously it wouldn't
13 create any adverse impact. As the existing demand
14 intensity of the use itself is not changing in terms
15 of the required parking, one wouldn't anticipate that
16 there would be the creation of any sort of new aspects
17 that might, in fact, lean us towards denying a special
18 exception or conditioning that special exception.

19 That's all I have at this point and I
20 would open it up to any others if they have comments.

21 Very well. We have a motion before us.
22 It's for approval. It has been seconded. I would ask
23 for all those in favor of the motion to signify by
24 saying aye.

25 (Chorus of ayes.)

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1 CHAIRPERSON GRIFFIS: And opposed?
2 Abstaining?

3 (No response.)

4 CHAIRPERSON GRIFFIS: Very well. Why
5 don't we record the vote.

6 MS. BAILEY: The vote is recorded, Mr.
7 Chairman, as 4-1-0. Mr. Griffis made the motion, Mrs.
8 Miller seconded. Mr. Mann and Mr. Hildebrand are in
9 agreement. Mr. Etherly is not present at this time.

10 CHAIRPERSON GRIFFIS: Good.

11 MS. BAILEY: The application is approved
12 as amended, and we're doing a summary order, Mr.
13 Chairman?

14 CHAIRPERSON GRIFFIS: I think we can waive
15 our regulations and issue a summary order unless there
16 is any objection from the Board. Not noting any
17 objection, that would be great.

18 MS. BAILEY: Thank you.

19 CHAIRPERSON GRIFFIS: Thank you all very
20 much. Appreciate you coming down again. A lot more
21 will be clarified, I'm sure, by the Commission, but
22 not everything. So there it is.

23 Very well. Let's move on to the next case
24 in the afternoon.

25 APPLICATION OF TEOFILA AYALA

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1 17231 ANC-1A

2 MS. BAILEY: Application Number 17231 of
3 Teofila Ayala pursuant to 11 DCMR 3103.2 for a
4 variance from the floor area ratio requirements under
5 Section 771 to allow the conversion of an existing
6 building to a restaurant. The property is located at
7 3568 14th Street, Northwest. It is also known as
8 Square 2688, Lot 22. The property is zoned C-2-A.

9 CHAIRPERSON GRIFFIS: There we are. Good
10 afternoon.

11 MR. DONOHUE: Good afternoon, Mr. Chair.
12 My name is Ed Donohue with the law firm Holland &
13 Knight. I am going to apologize to the Board because
14 both the applicant and the witness, while they are in
15 route, are not here yet.

16 CHAIRPERSON GRIFFIS: Is that right?

17 MR. DONOHUE: You have moved so quickly
18 and efficiently through your schedule.

19 CHAIRPERSON GRIFFIS: Exactly.

20 MR. DONOHUE: I expect them both. And I
21 spoke with the single member district as well, and she
22 is on her way.

23 CHAIRPERSON GRIFFIS: Okay. How much time
24 do you think they need?

25 MR. DONOHUE: I expect they will be here

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1 by 3:15.

2 CHAIRPERSON GRIFFIS: Oh. Okay. Not a
3 problem. We will break and you can give indication.
4 If we're not back, we will come back around 3:15 or we
5 will send an emissary out to see if you are ready.

6 MR. DONOHUE: Thank you.

7 CHAIRPERSON GRIFFIS: Good. Thank you.

8 (Recess.)

9 CHAIRPERSON GRIFFIS: Okay. Let's resume.
10 Are we ready to go?

11 MR. DONOHUE: Yes, sir.

12 CHAIRPERSON GRIFFIS: Excellent.

13 MR. DONOHUE: Mr. Chairman, members of the
14 Board, my name is Ed Donohue with the law firm Holland
15 & Knight, and thank you for indulging us for a brief
16 recess to get all players here.

17 Let me introduce the folks at the table,
18 and also our ANC representative, who joined us as
19 well. To my far right, Mr. Teofila Ayala, who is the
20 owner and applicant, and Mr. Ed Nunley between Mr.
21 Ayala and myself. Mr. Nunley will be our expert
22 witness on zoning and code issues.

23 What I thought I would do, Mr. Chair, is
24 to just very briefly outline what we intend to cover,
25 and then I'm going to ask Mr. Ayala to begin his

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1 testimony.

2 Before doing so, Ms. Arguelles is here
3 from the ANC-1A, and I know that she is going to be
4 speaking. I hope to hear her speak in support, but
5 I'm pleased to have her come in any event.

6 Very briefly, Mr. Ayala will testify about
7 his acquisition of the property, the condition when he
8 bought the building in 2001 and what he proposes to
9 do. In addition, Mr. Ayala will explain what he found
10 upon acquiring the building approximately three years
11 ago. Mr. Ayala is a successful restaurateur. He has
12 a couple of places in the District of Columbia, and he
13 has been looking forward to serving food in the
14 Columbia Heights neighborhood for a couple of years
15 now.

16 Mr. Nunley will then testify about the
17 physical constraints and access and code issues
18 attendant to the second floor of the building. As the
19 Board knows, Mr. Nunley was the former chief of the
20 Review Branch for many, many years, having appeared
21 before this Board on a number of occasions, and I'm
22 going to ask Mr. Nunley to cover the, as I said, the
23 zoning and the code issues.

24 Very briefly, what's important to remember
25 in this case is that we are not proposing an addition.

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1 What we're talking about is the full use of the second
2 floor of the building. This is a C-2-A zoned district
3 and maximum non-residential FAR is limited, of course,
4 to 1.5. The existing conditions, the building today
5 is at a 1.98 FAR. So we don't have proposed additions
6 to talk about and we don't have a parking variance to
7 talk about, either. What we have to talk about is the
8 maximization, if you will, use of the building.

9 What's exceptional or unique about the
10 building? It was built in 1912. At some point, an
11 addition was added on, arriving at the gross floor
12 area that Mr. Nunley is going to explain to you with
13 an FAR of 1.98. We have a situation where a by-right
14 use, a restaurant, is proposed for the building.

15 There is no question that the restaurant could occupy
16 a one and a half FAR as a matter of right, so we're
17 talking about a half of the second floor of the
18 building. The second floor has one means of ingress
19 and egress. That staircase is roughly in the middle
20 of the floor plate. Mr. Nunley is going to walk you
21 through that configuration.

22 So what we're talking about essentially
23 is, if it's a half of the second floor, what would it
24 take in order to make that a viable residential unit,
25 if you will. What are the issues in terms of access,

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1 fire code, separation, of course, ingress and egress,
2 those kinds of things? But I want the Board to
3 remember that, if you will, as we go forward.

4 I looked at a number of cases, some as
5 recently as last month -- as a matter of fact, the
6 same day that we were called -- but a number of other
7 cases where the Board has looked at this question, the
8 question of use above one and a half FAR, and in
9 almost every case, you were faced with a proposed
10 addition and the applicant was coming in and talking
11 about things like economic conditions or the
12 neighborhood or whatever else, trying to justify an
13 addition over and above the one and a half. I think
14 what is different here, at least in my mind, is that
15 you have an existing building envelope, if you will.

16 So without further delay, let me introduce
17 Mr. Ayala, and cover the issues that I asked you to,
18 sir.

19 CHAIRPERSON GRIFFIS: Good. Before he
20 jumps into that, though, let me go back and maybe slow
21 it down a little bit.

22 MR. DONOHUE: Yes, sir.

23 CHAIRPERSON GRIFFIS: And it's interesting
24 -- well, so what you're saying is in a C-2-A, you have
25 a certain FAR prescribed -- 1.5 FAR -- that can be

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1 used as commercial. There's no question that this use
2 is matter of right.

3 MR. DONOHUE: Yes.

4 CHAIRPERSON GRIFFIS: Meaning it's not
5 here for a variance for it, the use, or a use
6 variance.

7 MR. DONOHUE: Correct.

8 CHAIRPERSON GRIFFIS: But rather we're
9 talking about FAR square footage and utilizing more
10 than the 1.5, because if you expand beyond that, you
11 go up, but it only takes up part of the second floor,
12 and the other part has to be used for residential
13 because that's left out. You've maxed out your FAR
14 for a commercial or the restaurant.

15 MR. DONOHUE: Correct.

16 CHAIRPERSON GRIFFIS: And now there's a
17 small portion in there for a little unit.

18 MR. DONOHUE: Yes.

19 CHAIRPERSON GRIFFIS: I see.

20 MR. DONOHUE: Well put.

21 CHAIRPERSON GRIFFIS: How much square
22 footage on the second floor is left over, do you know?
23 Do we know?

24 MR. NUNLEY: It's around 660 square feet.

25 CHAIRPERSON GRIFFIS: Okay. So 660 square

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1 feet is what we're talking about that has to be used
2 according to strict regulations for residential use.

3 MR. NUNLEY: That's correct.

4 CHAIRPERSON GRIFFIS: 660. But that's
5 just on the second floor. That's the total gross
6 square footage.

7 MR. NUNLEY: That's correct.

8 CHAIRPERSON GRIFFIS: That's exterior wall
9 to wherever you're going to stop at.

10 MR. NUNLEY: Exactly.

11 CHAIRPERSON GRIFFIS: And what you're
12 about to tell us and actually what is in the writing,
13 in the submission, is that, well, in order to do that,
14 you have to have a second stairway.

15 MR. NUNLEY: You do because of the mix of
16 commercial and residential.

17 CHAIRPERSON GRIFFIS: Right. You have to
18 have your code separation, be it fire and be it egress
19 from the restaurant use because now you've got a
20 restaurant on the second floor; they've got to get
21 out. That's going to be an assembly use; it's a whole
22 different stair. And then you've got this one unit
23 that's fitting in at 600 -- what's the standard stair
24 for egress dimension?

25 MR. NUNLEY: Standard would be 36 inches,

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1 but for this mixed use, we're talking 44 inches.

2 CHAIRPERSON GRIFFIS: Okay. So that's
3 just one way, and this one is a switchback, so it's
4 twice that.

5 MR. NUNLEY: Yes.

6 CHAIRPERSON GRIFFIS: So we're talking
7 about -- 36 is three feet, so it would be conceivably
8 six feet, or 48 is four feet, which is conceivably
9 eight feet.

10 MR. NUNLEY: You've got eight feet.

11 CHAIRPERSON GRIFFIS: So now we have eight
12 feet in the run. What is the dimension of this stair
13 that is in here now, do you know?

14 MR. NUNLEY: Interior dimension between
15 railings is currently 40 inches.

16 CHAIRPERSON GRIFFIS: Yes. But from
17 landing to the exterior space, although that's angled,
18 I mean, that must be -- I'm just going to use a
19 hypothetical to try and get this for my understanding
20 here. Let's say it's ten feet. Okay. So you have
21 the landing ten feet down to the exterior because
22 you're switching back.

23 MR. NUNLEY: Yes.

24 CHAIRPERSON GRIFFIS: So that's ten by
25 eight.

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1 MR. NUNLEY: Yes. That's another loss of
2 80 square feet.

3 CHAIRPERSON GRIFFIS: So that's 80 square
4 feet away from the 660.

5 MR. NUNLEY: Yes.

6 CHAIRPERSON GRIFFIS: Okay. So we're
7 under 500 square feet that's left over essentially for
8 a real residential unit.

9 MR. NUNLEY: Exactly.

10 CHAIRPERSON GRIFFIS: Under 600. Indeed.
11 I think I understand.

12 Okay. Any other preliminary questions,
13 Ms. Miller?

14 VICE CHAIRPERSON MILLER: Has the second
15 floor ever been used for residential purposes?

16 MR. NUNLEY: There are indications that it
17 has been used for residential purposes. Mr. Ayala is
18 going to speak to this, but when he purchased the
19 property, it was broken up into rooms. There was
20 flooring that implied that there may have at one point
21 been a kitchen there, but there were no appliances, no
22 stub-outs or anything indicating what it was, whether
23 it was a bathroom, kitchen, or whatever. But the
24 assumption, based on the way he saw the configuration
25 of the rooms, and I will let him speak to that, was

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1 that it had at some point been residential.

2 VICE CHAIRPERSON MILLER: And do you know
3 what was on the ground floor when the second floor was
4 residential?

5 MR. NUNLEY: The ground floor according to
6 the latest certificate of occupancy was carryout.

7 VICE CHAIRPERSON MILLER: Thank you.

8 CHAIRPERSON GRIFFIS: Good. Okay. Let's
9 go ahead.

10 TESTIMONY BY TEOFILA AYALA

11 MR. AYALA: My name is Teofila Ayala, and
12 I bought the property in 2000, November 2000, about
13 four years ago, and the condition of the house was
14 empty, you know, was kind of scary, you know, maybe
15 because it was -- I don't know how long it was vacant.
16 I fixed the property in trying to turn it into a
17 restaurant, family restaurant, and I did some work on
18 the second floor and the first floor. That is what
19 I'm planning to do.

20 CHAIRPERSON GRIFFIS: Excellent.

21 MR. AYALA: Concerning myself, you know,
22 I tried to fix it nice, you know, so it can compare
23 with the other house, you know, painting and can have
24 a lot of details that have been done in the house.

25 CHAIRPERSON GRIFFIS: Good. In the

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1 opening statement, it was mentioned that you own and
2 operate other restaurants in the city?

3 MR. AYALA: Yes.

4 CHAIRPERSON GRIFFIS: What other ones?

5 MR. AYALA: The Frontera Cantina, which is
6 at 1633 17th Street, Northwest, Dupont Circle, and
7 another one is at 1832 Columbia Road, Adams Morgan.

8 CHAIRPERSON GRIFFIS: What is the name of
9 that one?

10 MR. AYALA: Frontera Grill.

11 CHAIRPERSON GRIFFIS: Oh, all right.

12 Okay.

13 MR. AYALA: Yes.

14 CHAIRPERSON GRIFFIS: And the operation of
15 those is similar to what you are proposing here?

16 MR. AYALA: Yes.

17 CHAIRPERSON GRIFFIS: And is it a sit-down
18 restaurant?

19 MR. AYALA: Sit-down restaurant, yes.

20 It's basically, you know, a family restaurant, a
21 dining restaurant.

22 CHAIRPERSON GRIFFIS: Right. Do any of
23 these function as nightclub-type aspects at all?

24 MR. AYALA: No. What I have, no. I don't
25 plan to do anything there --

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1 CHAIRPERSON GRIFFIS: None of that.

2 MR. AYALA: No. No. What I have in mind
3 to do there is, you know, close before other places
4 there are still open, you know, because my type of
5 clientele that I like to get there is something that,
6 you know, have dinner, you know. Eleven or twelve,
7 it's closed. So nothing that's going to be late
8 night, you know, to get bar stuff.

9 CHAIRPERSON GRIFFIS: Okay. Good.

10 MR. DONOHUE: That is one of the important
11 considerations with our discussions with the ANC, and
12 I know Ms. Arguelles is going to speak to that, but
13 she actually visited one of the other restaurants in
14 order to satisfy in her mind what the nature of the
15 operation was.

16 Let me ask Mr. Nunley to please go into a
17 little bit further some of the code and zoning issues
18 that the Chairman introduced.

19 TESTIMONY OF EDWARD NUNLEY

20 MR. NUNLEY: Well, we have basically gone
21 over them in the report that we submitted. We are
22 left with such a small area if he exercises his matter
23 of right for the restaurant, and then with the
24 addition of the stairway being right in the middle no
25 matter how you cut this thing up in order to have both

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1 uses existing on that second floor, you have to meet
2 building code requirements that further reduces the
3 amount of space that could be allocated to either one
4 of the uses.

5 This is kind of an aside, but I checked
6 with the housing regulations in terms of what it would
7 take to put together a unit, and even if --
8 notwithstanding the stairway coming up through the
9 middle and killing that additional space, each
10 habitable room for a single person under the housing
11 regs would have to have 130 square feet, and if you
12 add up the number of rooms it would take to make a
13 reasonable dwelling unit on that floor, you wouldn't
14 be able to put it in there.

15 Also, you've got the single stairway. You
16 would either have to --

17 COMMISSIONER HILDEBRAND: I don't get it.

18 MR. NUNLEY: Say again?

19 COMMISSIONER HILDEBRAND: I just didn't
20 follow your logic there. There are many one-bedroom
21 apartments in the city that are 500 square feet.

22 MR. NUNLEY: Yes, well, only a single
23 individual, single person.

24 COMMISSIONER HILDEBRAND: Still a
25 residential unit.

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1 MR. NUNLEY: All right. Well, not a very
2 desirable residential unit, 500 square feet.

3 CHAIRPERSON GRIFFIS: Don't tell us folks
4 buying condos.

5 COMMISSIONER HILDEBRAND: Exactly.

6 MR. NUNLEY: But anyway, in order to have
7 both uses up there given this stairway, he would have
8 to either put in a second stairway, which would
9 further diminish the space in there, or he would have
10 to put in a fire-proof hallway to get from the single
11 stairway, which would have to be widened, from one use
12 to the other, a protected hallway. So what we're
13 looking at, we're looking at even less than the 500
14 square feet if you were to put in a second stairway
15 and a hallway. It just doesn't make reasonable sense.

16 COMMISSIONER HILDEBRAND: Well, that's
17 assuming that you're taking out the residential
18 component. You could also take the second stairway
19 out of the commercial side, lowering your commercial,
20 if you were going to do two separate entrances.

21 CHAIRPERSON GRIFFIS: But you know what's
22 interesting, and that is -- throwing this out there as
23 if we're building a building, if I had to design this,
24 I think it could start to try and accommodate it. I
25 mean, 550 square feet -- I mean, my goodness, I think

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1 one is on the market today for \$600,000. But the
2 aspect is, we have an existing condition -- I'm
3 re-looking at this because this is a continuation, of
4 course -- but I direct the Board's attention to the
5 second floor plan, and I don't know who built this
6 stairway in, but it starts at the rear of the
7 building, at the wide aspect. It's not just a
8 switchback; it's kind of a switch back and around. Is
9 everyone following me? This stair starts at the rear
10 portion and goes down seven risers, hits a landing,
11 turns, goes down again, hits another landing, turns,
12 goes down again. So really what we're talking about
13 with the existing condition, as I would see it, is
14 you're laying out your residential unit at the rear,
15 right, if we had to carve out one space that's already
16 started to define.

17 Now, not noting -- I mean, this is a scale
18 document, but I don't have a scale with me, but it
19 looks like that's about ten feet deep. So let's say
20 it's ten --

21 MR. NUNLEY: Are we talking about from the
22 landing to the exterior wall?

23 CHAIRPERSON GRIFFIS: No. I'm talking
24 about that small room that's actually labelled on this
25 "floor and roof."

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1 MR. NUNLEY: Oh. This basement?

2 CHAIRPERSON GRIFFIS: Do you know what,
3 roughly, the square footage of that area is?

4 MR. NUNLEY: I honestly don't have that.

5 CHAIRPERSON GRIFFIS: Do you have the
6 width dimension of that back porch in the widest
7 portion of the property?

8 MR. NUNLEY: The first floor plan is
9 showing it as nine feet.

10 CHAIRPERSON GRIFFIS: All right.

11 COMMISSIONER HILDEBRAND: Can you clarify
12 for me, do the plans that we're looking at, A1 and I
13 guess A7, do they show the existing configuration of
14 the interior of the space? That stairway exists that
15 way currently or is this the proposed solution?

16 MR. NUNLEY: It exists that way currently,
17 and I don't know why it's showing on the second floor
18 plan, but this little turn down that you're seeing, it
19 goes -- that's the part that goes to the basement. I
20 don't know why it's showing it on the second floor.

21 CHAIRPERSON GRIFFIS: The access to the
22 basement comes in around door number 12 and goes
23 straight down, does it not?

24 MR. NUNLEY: Yes.

25 CHAIRPERSON GRIFFIS: Okay. And then if

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1 you go left of that, you go up.

2 MR. NUNLEY: Up.

3 CHAIRPERSON GRIFFIS: So as you start
4 going up, you hit that one landing, you turn around
5 and switch back, --

6 MR. NUNLEY: Yes.

7 CHAIRPERSON GRIFFIS: -- you go up. And
8 when you hit the second floor, you continue to go up
9 and then you turn left. That stairway takes you left
10 towards the rear of the building; is that correct? Or
11 no?

12 MR. DONOHUE: That's what's shown on the
13 plans, Mr. Chair, but I don't think that's in fact
14 what's there.

15 MR. NUNLEY: I don't think that's in fact
16 what is there either.

17 CHAIRPERSON GRIFFIS: So you would just --
18 that stair would end at the landing.

19 MR. NUNLEY: That stair would end at the
20 landing.

21 CHAIRPERSON GRIFFIS: I see. Towards the
22 side street.

23 MR. DONOHUE: The access -- as you point
24 out, these are existing conditions. The access is
25 roughly two-thirds of the way down Perry as you come

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1 off of 14th Street.

2 CHAIRPERSON GRIFFIS: Right.

3 MR. DONOHUE: There are two doors side by
4 side and one goes directly into the kitchen.

5 MR. NUNLEY: Yes.

6 MR. DONOHUE: And the other provides
7 access to the main part of the restaurant and then to
8 the stairway.

9 CHAIRPERSON GRIFFIS: Okay. So perhaps we
10 are showing a stair and railing that doesn't exist or
11 --

12 MR. DONOHUE: The stair is there. I think
13 the turns are off. The stairwell does occupy that
14 space.

15 CHAIRPERSON GRIFFIS: Right.

16 MR. NUNLEY: Yes, it does.

17 CHAIRPERSON GRIFFIS: Okay. Let's get
18 total clarification. That area that's floor and roof,
19 it's labeled in that back portion --

20 MR. NUNLEY: Yes.

21 CHAIRPERSON GRIFFIS: -- that's enclosed,
22 correct?

23 MR. DONOHUE: That's correct.

24 MR. NUNLEY: Yes.

25 CHAIRPERSON GRIFFIS: In fact, it looks

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1 like it has new siding on it from the photographs that
2 we're seeing.

3 MR. DONOHUE: It's probably the addition
4 that's post-1912.

5 CHAIRPERSON GRIFFIS: Right. And you're
6 saying there is no actual stairs that go into that
7 area.

8 MR. NUNLEY: No.

9 CHAIRPERSON GRIFFIS: Okay. So these
10 don't exist.

11 Okay. But be that as it may, we're
12 looking at that back porch, and what you're saying is
13 that written submission which you have just testified
14 to is that you're going to have some fire-rated
15 separation between those, vertically, of course, but
16 horizontally, so across that floor.

17 MR. NUNLEY: Exactly.

18 CHAIRPERSON GRIFFIS: If you do that,
19 you're going to have to penetrate that to get to use
20 the same stair.

21 MR. NUNLEY: Exactly.

22 CHAIRPERSON GRIFFIS: So conceivably you
23 have an entrance to a residential unit that is also
24 right off of the seating for the restaurant.

25 MR. NUNLEY: That's correct.

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1 CHAIRPERSON GRIFFIS: That is, if you can
2 get the fire rating of the doors to accommodate that.
3 Okay.

4 MR. DONOHUE: I think it's fair to say
5 there is a practical difficulty associated with trying
6 to recapture what would essentially be something less
7 than 500 square feet. I think it's important to
8 recall what Mr. Ayala said, that it was vacant, had
9 been vacant for many, many years.

10 I submit to you that if the application is
11 not approved, if the 1.5 is all the restaurant that
12 Mr. Ayala is going to get, that other .5 or .4, .48
13 FAR would, in fact, be wasted because I don't think
14 anyone would attempt to go through the effort and cost
15 attendant with trying to create that type of a
16 residential unit.

17 Finally, Mr. Chair, I think that you can
18 consider this as a positive attribute rather than --
19 you know, the language in the code speaks of an
20 impediment or a detriment to the neighborhood or to
21 the zone plan. This is clearly within the commercial
22 corridor of 14th Street, it's clearly in the C-2-A
23 zone. It is clear that restaurants are popular in
24 this neighborhood, there is no doubt. The Office of
25 Planning makes a comment that the neighborhood is

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1 adequately served by the restaurants.

2 I think that the single member district
3 ANC commissioner will speak about some of the
4 restaurants that they are not very happy with, but
5 that's really not what we're about here. We're about
6 trying to establish the criteria for an area variance.
7 It has to do with the uniqueness and extraordinary
8 conditions that we find, the practical difficulties
9 that arise from that, and then the assessment as to
10 whether this can be approved in accordance with the
11 zone plan, and I think we have met the criteria in
12 each case.

13 I think that you correctly point out we
14 have existing conditions here, and were we to start
15 from scratch, it might be a different story, but
16 that's not the case.

17 CHAIRPERSON GRIFFIS: Good. Thank you.

18 Ms. Miller?

19 VICE CHAIRPERSON MILLER: Can you address
20 what may have changed maybe with respect to building
21 codes or otherwise from the time when there was a
22 residential unit above a commercial unit?

23 MR. NUNLEY: I honestly can't. I have
24 been out of the building code arena many, many years.
25 But I don't think that there would have been an issue.

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1 Again, we don't know exactly when that second floor
2 was used for residential, so I don't know what codes
3 might have been in effect at that time. But the only
4 code since the previous use only asked for the first
5 floor. It was a carryout, it wasn't a restaurant, it
6 didn't need the space of a restaurant. The only issue
7 would be separation between the first floor and the
8 second floor, which would be basically ceiling and
9 stairwell, doors.

10 VICE CHAIRPERSON MILLER: Do you know if
11 it, in fact, was used as a residential unit when there
12 was commercial downstairs?

13 MR. NUNLEY: We don't know that for sure,
14 no. That was just an assumption based on the zoning
15 regulations and the fact that it was cut up into rooms
16 upstairs.

17 VICE CHAIRPERSON MILLER: Thank you.

18 COMMISSIONER HILDEBRAND: Just so I
19 understand, the kitchen configuration that's shown on
20 these plans, that is the existing configuration. The
21 kitchen is along the back edge of the property
22 accessed through that back door on Perry Street.

23 MR. NUNLEY: The restaurant. Yes, the
24 restaurant kitchen, yes.

25 COMMISSIONER HILDEBRAND: The kitchen --

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1 MR. NUNLEY: Yes.

2 COMMISSIONER HILDEBRAND: -- as shown here
3 on your first floor plan.

4 MR. NUNLEY: Yes.

5 COMMISSIONER HILDEBRAND: So to try to
6 introduce a second entrance that was isolated just for
7 the residential unit, you would basically isolate one
8 entrance to your kitchen by closing that off for a
9 corridor up to the second floor.

10 MR. NUNLEY: Exactly.

11 COMMISSIONER HILDEBRAND: It would make
12 the kitchen less efficient for servicing --

13 MR. NUNLEY: Absolutely correct.

14 COMMISSIONER HILDEBRAND: -- the
15 restaurant space.

16 CHAIRPERSON GRIFFIS: Okay. Any other
17 questions from the Board at this time?

18 Anything else?

19 MR. DONOHUE: I just point out, Mr. Chair,
20 that a number of the places, when I was looking at
21 sort of comparable cases where the Board had
22 considered this, a number of the places that are
23 approved and are in existence down near the Navy Yard
24 in fact came through kind of a similar situation where
25 the Board had to consider use of second floor. I did

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1 provide -- pulled a couple of those to take a look at
2 them. But that's my understanding, that that was a
3 rather common occurrence back some 15 or so years ago.

4 CHAIRPERSON GRIFFIS: Recently?

5 MR. DONOHUE: Well, I looked at the one
6 that was actually up last month the same time that we
7 were called, --

8 CHAIRPERSON GRIFFIS: Right.

9 MR. DONOHUE: -- which I found to be
10 pretty comparable, to tell you the truth. That was a
11 case that -- 17228.

12 CHAIRPERSON GRIFFIS: Okay. Wouldn't that
13 be amazing if you could just call a case by memory by
14 the case number? I remember that. Good.

15 Very well. Anything else?

16 MR. DONOHUE: No. What I would like to do
17 is reserve a little bit of time for closing.

18 CHAIRPERSON GRIFFIS: No, no, we'll get to
19 closing and all that.

20 MR. DONOHUE: That's all we have.

21 CHAIRPERSON GRIFFIS: Let's run through
22 the rest of the piece. Let's go to the Office of
23 Planning and let's move on to their report.

24 REPORT FROM THE OFFICE OF PLANNING

25 BY JOHN MOORE

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1 MR. MOORE: Good afternoon, Mr. Chair and
2 members of the Board.

3 CHAIRPERSON GRIFFIS: Welcome back.

4 MR. MOORE: John Moore back again.

5 All positions taken by the Office of
6 Planning are not always popular, but they are sound in
7 this case. In the Office of Planning report, we
8 recommended that the application be denied and we
9 referenced two areas.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. MOORE: One, we didn't believe that
12 the applicant should be allowed to eliminate the
13 residential requirement on the second floor, and two,
14 we thought that the first floor could be modified to
15 better accommodate more tables since the applicant's
16 position was they can only get five tables on the
17 first floor.

18 I have had two meetings with the
19 applicant, several phone calls, and we exchanged many
20 e-mails between the time this meeting was postponed
21 from last month to this month, and we are still of the
22 same opinion.

23 Where the applicant is focusing on the 1.5
24 ability as a matter of right, I would much rather
25 focus on the fact that there is also a 1.1 FAR

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1 required for residential in the same building. So I
2 would much rather focus on that.

3 As opposed to having the configuration of
4 stairwells and doors that the applicant is proposing,
5 what has not been said is that there is an existing
6 door on the residential side of the property clearly
7 marked and going to the second floor for residential
8 purposes.

9 Lastly, when the applicant got a building
10 permit in 2000 -- in May of 2003, the building permit
11 said the existing use was a delicatessen on the first
12 floor and a dwelling unit on the second floor, and we
13 still are of the opinion that that residential unit
14 requirement should remain. We are virtually unchanged
15 in our recommendation.

16 CHAIRPERSON GRIFFIS: Okay. And noting
17 that statement and also your analysis in your written
18 report, you don't find that the uniqueness and
19 practical difficulty rise to the level of supporting
20 this application even with the angular shape of the
21 lot and the diminished dimensions?

22 MR. MOORE: The answer is yes. When the
23 building was purchased by this applicant, there was a
24 residential unit there then. We see no reason that --
25 they provided no proof to the Office of Planning's

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1 satisfaction that that use should be eliminated.

2 CHAIRPERSON GRIFFIS: Okay. And do you
3 have their drawings in front of you? Do you have
4 copies of these?

5 MR. MOORE: No, I don't. I'm pretty
6 familiar with them.

7 CHAIRPERSON GRIFFIS: You just indicated
8 that there is an entrance that's not showing on this
9 that's existing?

10 MR. MOORE: No. I'm saying that they
11 would modify the entrance that is there now. There is
12 an entrance from Perry Place that goes to the second
13 floor right now.

14 CHAIRPERSON GRIFFIS: Right. Okay. Which
15 is showing here perhaps in the same location, but it's
16 of a different function in their plan. And your point
17 is it could be just residential.

18 MR. MOORE: My point is they would have to
19 modify that to make it for mixed uses.

20 CHAIRPERSON GRIFFIS: I see.

21 MR. MOORE: But right now, it's designed
22 for residential.

23 CHAIRPERSON GRIFFIS: Yes. It's an
24 interesting point, and I tend to agree. Actually, an
25 excellent model and a very urban model is to have

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1 commercial retail on the first floor and apartments
2 above, and I think that ought to be encouraged.
3 Actually, it's intriguing to see the Office of
4 Planning's report, their photograph on the second page
5 that -- you know, that looks like a fantastic urban
6 lot, you know, storefront bays and residential units
7 above. I certainly support that model.

8 But then when you get to this and the
9 specifics, what I'm having a more difficult time with
10 is even if you take it -- either way you take it --
11 well, take the 1.5 first and you max that out, they
12 don't have a full 2.5 here, my math serves me, right?

13 MR. MOORE: True.

14 CHAIRPERSON GRIFFIS: Is that right?
15 That's right. Yes, it's 1.9. Okay. So if we're
16 fulfilling the 1.5, we're actually going up onto the
17 second floor. So the issue of use, the residential
18 use on the second floor, isn't really understand
19 discussion.

20 MR. MOORE: No.

21 CHAIRPERSON GRIFFIS: But now it's, well,
22 when you maximize that out, allowable FAR for the
23 matter-of-right use, then what do you do with the rest
24 of it and how do you fit it out? And that's what the
25 practical difficulty is coming in, to say, you know,

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1 once you get to that point, how do you get to the
2 others?

3 Your point is, which is well taken, well,
4 you know, you could conceivably maximize your first
5 floor and utilize it for your purposes of the business
6 and then use the whole second floor for residential;
7 is that correct?

8 MR. MOORE: That is the Office of
9 Planning's point.

10 CHAIRPERSON GRIFFIS: Okay.

11 Follow-up questions from the Board?

12 Does the applicant have any --

13 VICE CHAIRPERSON MILLER: I have a
14 question.

15 CHAIRPERSON GRIFFIS: Yes, Ms. Miller.

16 VICE CHAIRPERSON MILLER: Mr. Moore, did
17 you say that there is an existing access to the
18 residential unit or did you say that they could modify
19 the design and create one?

20 MR. MOORE: No, I'm saying there exists
21 right now --

22 VICE CHAIRPERSON MILLER: There exists
23 one.

24 MR. MOORE: -- an entrance to the second
25 floor from Perry Place.

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1 CHAIRPERSON GRIFFIS: But he said both.

2 VICE CHAIRPERSON MILLER: That's why I got
3 confused.

4 CHAIRPERSON GRIFFIS: Indeed.

5 VICE CHAIRPERSON MILLER: Okay.

6 CHAIRPERSON GRIFFIS: So I'm going to walk
7 him through as I understand this and I'm going to
8 utilize the drawings that are here, Mr. Moore, and
9 jump in if you don't agree with me.

10 What you're saying is this door, which is
11 labelled here as -- it's a 12 and a circle on the
12 door, which is why I called it Door Number 12 when I
13 was talking about the applicant, this door is
14 existing. Mr. Moore is saying right now, you utilize
15 this door to go up these stairs to get to the second
16 level. That can certainly be used the same way.
17 Now, the design would have to be modified so that this
18 would be somewhat segregated however they want to do
19 it so that it would just be the residential entrance,
20 and the retail or the restaurant would maintain on the
21 first floor.

22 So if you segregate the first floor use
23 for restaurant, you can easily have a dedicated use,
24 you don't get into the space, you don't get into any
25 sort of shared egress or circulation, you can get

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1 right upstairs to the residential, no problem.

2 Is that about right?

3 MR. MOORE: That's right.

4 CHAIRPERSON GRIFFIS: Okay. But now you
5 go to the zoning regs and the zoning regs say, yes,
6 but you can use square footage on the second floor for
7 the restaurant, but you've got to also provide the
8 leftover, which is the 660, for the apartment or
9 residential use.

10 VICE CHAIRPERSON MILLER: Do we have the
11 issue in this case that we have had in other cases
12 where there is only one bathroom that both would have
13 to share or do we have two bathrooms, one for
14 residents and one for the restaurant?

15 MR. MOORE: I don't know the answer to
16 that question.

17 VICE CHAIRPERSON MILLER: Applicant, can
18 you answer?

19 MR. NUNLEY: You mean on the second floor?

20 VICE CHAIRPERSON MILLER: I'm saying, I
21 think in some of the other cases that we have had,
22 there has been an issue about the bathroom, whether
23 there is a separate bathroom for the residents and a
24 separate bathroom for the restaurant, and I'm
25 wondering, is that an issue in this case?

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1 MR. NUNLEY: Well, if residents were to be
2 put up there, there would have to be a separate
3 bathroom for the residential. The building code won't
4 allow you to go through a bathroom into a commercial
5 space. It would have to have a bathroom within that
6 unit.

7 VICE CHAIRPERSON MILLER: The current
8 situation is there is only one bathroom?

9 MR. NUNLEY: Yes.

10 VICE CHAIRPERSON MILLER: Okay.

11 CHAIRPERSON GRIFFIS: Does anyone have
12 anything else for OP? Yes, Mr. Hildebrand.

13 COMMISSIONER HILDEBRAND: Have you been in
14 the building recently?

15 MR. MOORE: No.

16 COMMISSIONER HILDEBRAND: Oh, you haven't.
17 Okay.

18 MR. MOORE: No.

19 CHAIRPERSON GRIFFIS: Thank you.

20 I'm still having a little difficulty
21 trying to determine if these plans reflect what you
22 want to build or they reflect what's actually there.
23 Can you be more explicit on what these drawings
24 represent?

25 MR. NUNLEY: In terms of the structure,

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1 they represent what is actually there. I mean, what
2 was preexisting and what is currently there. In terms
3 of structure, when I say that, I mean the walls, the
4 stairs --

5 CHAIRPERSON GRIFFIS: The base building.

6 MR. NUNLEY: The base building, yes. Now,
7 the bathrooms, the double bathrooms that are showing
8 on the second floor, men and women, were not there,
9 obviously, will be there.

10 CHAIRPERSON GRIFFIS: This is proposed
11 interior renovation.

12 MR. NUNLEY: Yes.

13 CHAIRPERSON GRIFFIS: So all that kitchen
14 -- everything we're seeing in 2 we should take as new
15 or it's marked as existing.

16 MR. NUNLEY: Exactly.

17 COMMISSIONER HILDEBRAND: But that is the
18 existing stair and its configuration and the kitchen
19 currently has two doors into it as shown on this plan?

20 MR. NUNLEY: That's correct.

21 COMMISSIONER HILDEBRAND: From the
22 interior space.

23 MR. NUNLEY: Well, yes, from the street
24 wall.

25 COMMISSIONER HILDEBRAND: When it was

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1 originally purchased, it had two doors into the
2 kitchen as shown on this plan?

3 MR. NUNLEY: Yes, except that that wasn't
4 at that time a kitchen yet.

5 COMMISSIONER HILDEBRAND: What was it,
6 then?

7 MR. AYALA: It was like a storage space,
8 but they had some kind of -- what they call --

9 CHAIRPERSON GRIFFIS: Can you turn your
10 microphone on?

11 MR. AYALA: Yes. The thing to take smoke
12 out because it was like chicken or something they cook
13 in the back.

14 CHAIRPERSON GRIFFIS: Oh. Like a hood,
15 exhaust --

16 MR. AYALA: Like a hood, yes. Yes.
17 Something like that.

18 CHAIRPERSON GRIFFIS: I see.

19 So your question is, those are the
20 openings into that room.

21 COMMISSIONER HILDEBRAND: Yes.

22 CHAIRPERSON GRIFFIS: And those are
23 existing. So there was a way in and a way out.

24 COMMISSIONER HILDEBRAND: So it almost
25 seems like there never was any real separation between

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1 the residential component and the commercial component
2 if you had to go through commercial space to get up to
3 the residential area.

4 CHAIRPERSON GRIFFIS: Right. Yes. You
5 kind of wonder how it worked.

6 COMMISSIONER HILDEBRAND: That's why I was
7 confused, because it's hard to tell what is original
8 and what is the proposed modification, and clearly it
9 would seem like the bar isn't probably there if it was
10 a delicatessen.

11 CHAIRPERSON GRIFFIS: Okay. Any other
12 questions for the Office of Planning? Ms. Miller,
13 questions of the applicant?

14 VICE CHAIRPERSON MILLER: Office of
15 Planning. I'm not sure exactly how to phrase this,
16 but basically I think you're saying that there is a
17 substantial detriment to the public good because the
18 commercial space is being increased at the expense of
19 the residential space? I guess I have a question.
20 Is restaurant use less preferable in a residential
21 area, say, than a carryout? I mean, with respect to
22 seeing the impact on the public good and the impact on
23 the residential aspect here --

24 CHAIRPERSON GRIFFIS: I'm not sure what
25 your question is. You're asking him --

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1 VICE CHAIRPERSON MILLER: I'm sorry. I
2 knew I was going to have trouble getting this out.
3 If we're looking at the public good and we're looking
4 at taking away residential --

5 CHAIRPERSON GRIFFIS: Mr. Moore, in
6 regulations, when you look at the public good or
7 conforming to the zone plan, is there a gradation of
8 uses outside of matter-of-right uses and special
9 exception uses?

10 MR. MOORE: No. As we attempted to weight
11 residential over commercial, the intent was that there
12 is a serious demand in that community, as most
13 communities, for residential space, and commercial
14 isn't a basic necessity. Well, restaurants. Living
15 quarters are basic.

16 CHAIRPERSON GRIFFIS: How about a card
17 shop? Book store? Cafe?

18 MR. MOORE: We would be of the same
19 opinion.

20 CHAIRPERSON GRIFFIS: Right. So the point
21 is you look at that as a comparison of commercial
22 retail and residential, not specifically restaurant
23 over a residential unit.

24 MR. MOORE: Yes.

25 CHAIRPERSON GRIFFIS: Okay.

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1 VICE CHAIRPERSON MILLER: I don't think
2 this goes to any specific test, but I think that I
3 have heard from community members that sometimes
4 carryouts have a more adverse impact on the public
5 than restaurants, and that's where my question goes
6 to.

7 CHAIRPERSON GRIFFIS: Oh. I see what
8 you're saying.

9 MR. MOORE: I would tend to agree with you
10 on that. As a matter of fact, we have a case -- I
11 think it's still open -- that deals with that very
12 issue.

13 CHAIRPERSON GRIFFIS: Well, let's talk
14 about it.

15 VICE CHAIRPERSON MILLER: Okay.

16 MR. MOORE: It has been around for a
17 while.

18 CHAIRPERSON GRIFFIS: Yes. It sure has.

19 MR. MOORE: I don't think it's gone away
20 yet.

21 CHAIRPERSON GRIFFIS: That's actually an
22 interesting point, and forgive me, but I thought you
23 had that in your report, or someone has that in this
24 case that's written, and the point is that --

25 MR. NUNLEY: We submitted that point.

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1 CHAIRPERSON GRIFFIS: All right. Your
2 submission. And the point is that the carryout
3 obviously has the wrappings, the trash, that people,
4 you know, buy something in the store and halfway down
5 the block they drop it on the sidewalk.

6 MR. NUNLEY: Much higher potential for a
7 negative impact.

8 CHAIRPERSON GRIFFIS: That's right. It
9 was your recent submission. Your recent submission
10 went into the fact of having a restaurant is obviously
11 encapsulated and things that are served there are
12 utilized there and then disposed of their properly.

13 MR. NUNLEY: That's correct.

14 CHAIRPERSON GRIFFIS: Okay. It's an
15 interesting point to bring out. Okay.

16 What else? Any other questions?

17 VICE CHAIRPERSON MILLER: Just for the
18 applicant, I think just whether they actually tried to
19 cost out the -- what would the cost be of
20 accommodating both the residential and the restaurant?
21 I mean, the test is there is practical difficulty, and
22 I wonder if you looked at the cost of actually trying
23 to accommodate it.

24 MR. DONOHUE: We thought it was
25 self-evident. When we added up all the difficulties

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1 attendant in trying to see what could be done to
2 capture one unit, we thought it was evident. And I
3 don't think we have run any cost numbers on financing,
4 if you will.

5 VICE CHAIRPERSON MILLER: Does that
6 include doing a financial assessment for having the
7 whole top floor residential and the whole bottom floor
8 restaurant?

9 MR. DONOHUE: Well, I guess that's the
10 philosophical difference with us and the Office of
11 Planning. You know, we look at a matter-of-right 1.5
12 FAR, and the Office of Planning starts from the
13 premise that residents on top, commercial down below.
14 The problem I have with that is that's not what I see
15 in Section 771. Mr. Moore spoke of the residential
16 requirement. I'm not aware of one. It speaks of
17 maximum permitted FAR of 2.5; apartment house use up
18 to 2.5; other permitted, 1.5. So we start from a
19 different premise, I guess you would have to say.

20 VICE CHAIRPERSON MILLER: So you don't
21 make the case that the restaurant couldn't make it
22 just by using the ground floor.

23 MR. DONOHUE: I mean, there are certainly
24 -- and actually I want to talk to Mr. Moore about this
25 because there are certainly financial implications.

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1 What Mr. Moore has just described is second floor
2 residential, first floor commercial but access through
3 the commercial, so that instead of a matter of right
4 1.5, we have something like a matter of right .9 or .8
5 because you have to decommission part of the first
6 floor to get to the second floor. That would be the
7 stairwell. So Mr. Moore has taken away gross floor
8 area on a policy decision.

9 CHAIRPERSON GRIFFIS: Okay. Anything
10 else?

11 You know, it's interesting, stepping out
12 a little bit from this case, but the C-2-A in my
13 limited experiences looking at these applications is
14 one of the most problematic zones in terms of the
15 issues that we get, especially with the mixed use, and
16 the mixed use is being mandated by the FAR, and what
17 we end up having is the C-2-A districts that are
18 overlaid on blocks similar to this which are row
19 dwelling blocks. So accommodating the mix within a
20 small footprint, it's just -- well, it's certainly
21 cumbersome when I look at it in terms of overall of
22 C-2-A.

23 I think one of the cases that was probably
24 cited by the applicant, if I recall correctly, was
25 fairly similar in terms of how do you do this in a

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1 small little townhouse. Sure, it sounds great.
2 You've got 2, 2.5 FAR, but your whole footprint is
3 1,000 square feet and you've got to accommodate. No
4 matter what it is, if you have two different uses,
5 you've got circulation patterns that are additive.

6 COMMISSIONER HILDEBRAND: So you're
7 suggesting that the commercial component should be
8 dropped to equal the residential component?

9 CHAIRPERSON GRIFFIS: No. I'm not writing
10 the text amendment yet. All I'm saying is, you know,
11 well -- maybe I'm taking this very astray, but in a
12 C-2-A zone, I mean, I think putting the zone district
13 there may be anticipating what should happen, and I
14 think that's a fine thing, but in order for that to
15 happen in a lot of these areas, it probably is going
16 to mean more of an assemblage of lots than thinking
17 that each one of these lots individually is going to
18 satisfy that mix of use because I think it becomes
19 more and more cumbersome as you look at some of these
20 -- this one in particular, in my opinion. I mean,
21 look at the shape of this thing, look at the location
22 of it. It seems to be fairly cumbersome in trying to
23 fit in that mix of use.

24 We have had 300,000-square-foot buildings
25 that have come in here and based on the encumbrances

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1 of mixing uses within the buildings have created
2 variances. I don't think that helps or doesn't help
3 this case, but what I'm saying is fundamentally mixed
4 use is oftentimes a difficult aspect to try and
5 implement into a building, and when something of this
6 size -- you know. Okay. Anything else? Any other
7 questions for the Office of Planning?

8 Does the ANC have any cross-examination of
9 the applicant or the Office of Planning? Any
10 questions of the applicant or Office of Planning?

11 MS. ARGUELLES: Not really.

12 CHAIRPERSON GRIFFIS: In that case, we're
13 ready for you. Why don't you come up, and I just need
14 you to state your name and address for the record,
15 and, of course, you can say that all into the
16 microphone so we get it all on the record.

17 TESTIMONY BY JACQUELINE ARGUELLES, ANC-1A

18 MS. ARGUELLES: My name is Jacqueline
19 Arguelles, I am ANC commissioner for Single Member
20 District 1A01. I live at 1424 Perry Place, Northwest,
21 which is on the street where the business, proposed
22 business is to be opened.

23 In talking with my constituents, we have
24 met because we are concerned about what goes on 14th
25 Street. Fourteenth Street has become a proliferation

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1 of different types of businesses, some legit, some not
2 so legit, so we are looking very closely now at what
3 might be, for lack of a better word, invading our
4 territory, and hearing about the proposed restaurant
5 that would go at the corner of 14th and Perry, I took
6 it upon myself, after hearing that Mr. Ayala had other
7 businesses, so I went to visit them.

8 I found them quite palatable, quite
9 pleasant, and that they were family-style restaurants
10 and, you know, conducted in a manner that one would be
11 glad to have within their community.

12 Unfortunately, I can't say that the other
13 businesses there are as pleasantly accepted. They,
14 too, the two businesses in the same block, opened as
15 restaurants -- that was their proposal. They now
16 exist as nightclubs. This is a major concern. We
17 don't mind a good restaurant, we would love to have a
18 nice restaurant to visit in the restaurant. As it is
19 now, we don't really have that. And I don't want to
20 say anything degrading to anybody's business, but
21 these businesses that exist tend to be hangouts that
22 spill over into the community, and that we don't need.
23 A nice restaurant is fine because people tend to go to
24 the restaurant, eat their meal, and leave and go home
25 or wherever else they intend to go on that evening or

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1 afternoon. That would be a pleasant addition. Clubs,
2 no. In fact, I wish in some cases, and this is
3 probably a personal view, that I could use a pencil
4 eraser and eradicate some of the problems that have
5 persisted because of what we currently have.

6 CHAIRPERSON GRIFFIS: So you want an
7 office supply store on the corner. Okay.

8 MS. ARGUELLES: No. But we are lacking a
9 lot of like restaurants and human needs, because 14th
10 Street and Columbia Heights has been in great disarray
11 for many years because of riots. The basic needs are
12 not always met by what is provided there and we do
13 need to enhance our community by adding those type of
14 things such as a real restaurant.

15 So with that in mind, I have at this time
16 no negative concerns other than the assurance that it
17 doesn't become a club later, a nightclub.

18 CHAIRPERSON GRIFFIS: Excellent. Thank
19 you very much. We appreciate your coming down here
20 this afternoon to provide that for us. Let me just
21 see if I understand correctly. You went to the other
22 sites or one of the other sites and you did find that
23 --

24 MS. ARGUELLES: Both. Both.

25 CHAIRPERSON GRIFFIS: Oh, you went to

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1 both.

2 MS. ARGUELLES: Yes.

3 CHAIRPERSON GRIFFIS: And you found them
4 to be as described: family oriented.

5 MS. ARGUELLES: Yes.

6 CHAIRPERSON GRIFFIS: And actually am I
7 correct that your statement -- it is the type of
8 restaurant you would like to have on your block.

9 MS. ARGUELLES: Right.

10 CHAIRPERSON GRIFFIS: Okay. Obviously
11 there is concern that it would start to become
12 something else other than what is proposed.

13 MS. ARGUELLES: Yes.

14 CHAIRPERSON GRIFFIS: Okay.

15 MS. ARGUELLES: And in talking with all
16 involved, I have been assured that we're going to meet
17 that agreement that it remain restaurant.

18 CHAIRPERSON GRIFFIS: Okay. Good. Thank
19 you.

20 Any other questions from the Board?

21 VICE CHAIRPERSON MILLER: I'm wondering,
22 how long have you lived at your address?

23 MS. ARGUELLES: I have lived on Perry
24 Place since 1952. That's when I purchased my home.
25 I lived a block away since '48.

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1 VICE CHAIRPERSON MILLER: Do you remember
2 when it was a mixed use?

3 MS. ARGUELLES: Yes, I do.

4 VICE CHAIRPERSON MILLER: There was a
5 carryout underneath and a --

6 MS. ARGUELLES: It was at one time a --
7 you could go to a window and order carryout and the
8 side door led to an apartment upstairs, yes.

9 CHAIRPERSON GRIFFIS: Who lived there, do
10 you know? Did the building owner live there?

11 CHAIRPERSON GRIFFIS: It was rented out.

12 CHAIRPERSON GRIFFIS: It was.

13 MS. ARGUELLES: In no case, under several
14 orders, none of the owners lived -- they did rent it
15 out as an apartment.

16 CHAIRPERSON GRIFFIS: Did the store or the
17 proprietor live up there?

18 MS. ARGUELLES: No.

19 CHAIRPERSON GRIFFIS: It was always
20 separate.

21 MS. ARGUELLES: Yes.

22 CHAIRPERSON GRIFFIS: Were you ever inside
23 the building?

24 MS. ARGUELLES: Yes.

25 CHAIRPERSON GRIFFIS: When you went into

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1 that residential door that's right at the stairs, was
2 that a sealed hallway?

3 MS. ARGUELLES: Yes, it was.

4 CHAIRPERSON GRIFFIS: So it was all closed
5 off.

6 MS. ARGUELLES: It was a private entrance,
7 goes straight up the steps to the apartment.

8 CHAIRPERSON GRIFFIS: I see. So you
9 walked in that door and you could only go upstairs.

10 MS. ARGUELLES: That's right.

11 CHAIRPERSON GRIFFIS: So it was cut off
12 from everything else that happened on the first floor.

13 MS. ARGUELLES: Right.

14 CHAIRPERSON GRIFFIS: Okay.

15 COMMISSIONER HILDEBRAND: In the other
16 restaurants that you visited, was there a substantial
17 bar component as part of the restaurant or were they
18 --

19 MS. ARGUELLES: Yes.

20 COMMISSIONER HILDEBRAND: -- predominantly
21 just table seating?

22 MS. ARGUELLES: Mostly tables but a
23 substantial size bar. In fact, any beverage that was
24 consumed I think came from that bar, and it was not
25 necessarily alcoholic.

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1 CHAIRPERSON GRIFFIS: Yes.

2 VICE CHAIRPERSON MILLER: I was just
3 wondering, do you have an opinion as to which is
4 preferable for your community: a carryout or a
5 restaurant of this type?

6 MS. ARGUELLES: Definitely. We have met
7 on this subject. We prefer a restaurant. We have a
8 carryout in the next block between Perry and Spring
9 Road which has become, for lack of a better term, a
10 greasy spoon hangout, and, you know, there is a
11 proliferation of undesirables that hang there. I
12 don't mean to call human beings undesirable, but those
13 who tend to be of the street and have business on the
14 street, that's where they stop to get their, you know,
15 their meals.

16 CHAIRPERSON GRIFFIS: Come on, that's got
17 to be the most delicate description we've ever heard.
18 People don't usually hold back on that here. I'm not
19 sure why. Okay. I think it's understood.

20 Anything else? Anything further? Does
21 the applicant have any cross-examination of the ANC
22 member?

23 MR. DONOHUE: No, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Thank you.

25 Thank you very much. It's always good to

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1 see you.

2 Very well. Let's continue. I don't have
3 any other government reports attendant to this
4 application at this time unless applicant is aware of
5 any others or Board members are aware of any other
6 submissions.

7 Okay. In which case, if you are ready, we
8 can go to any closings, unless -- do you have rebuttal
9 testimony?

10 MR. DONOHUE: I'm going to ask one
11 redirect of Mr. Nunley.

12 Mr. Nunley, if you would, go back to the
13 question or the scenario that Mr. Moore painted, which
14 was access to the second floor, a residential unit on
15 the second floor through the first floor, and what I'm
16 trying to get at is what would be left, so let's start
17 from this: What's the floor area of the first floor
18 restaurant approximately?

19 MR. NUNLEY: Thirteen-oh-two, as I recall,
20 the entire floor.

21 MR. DONOHUE: Yes.

22 MR. NUNLEY: Yes, 1302.

23 MR. DONOHUE: Okay. And the area that
24 would be subtracted from that amount by virtue of the
25 staircase would be how much?

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1 MR. NUNLEY: Minimum of 155. That's just
2 the interior of the stair enclosure, 155 square feet.

3 MR. DONOHUE: So it wouldn't include the
4 fire code rating separation or anything like that?

5 MR. NUNLEY: No. No.

6 MR. DONOHUE: Do you have an opinion of
7 what the gross floor area subtracted from 1320 would
8 be?

9 MR. NUNLEY: Well, for the first floor
10 deductions, when I took out the other walls, et
11 cetera, then just broke it down to useable floor
12 space, there would be a reduction of 325.64 square
13 feet on the first floor alone.

14 MR. DONOHUE: So if the resolution of this
15 would be residential on second floor, commercial on
16 first floor, you would be backing out of the 1320 325
17 square feet.

18 MR. NUNLEY: Yes.

19 MR. DONOHUE: Leaving you with a little
20 less than a thousand square feet for the restaurant.

21 MR. NUNLEY: Yes.

22 CHAIRPERSON GRIFFIS: And what would that
23 be, the FAR number, if the lot is 1320 approximately?

24 MR. NUNLEY: It would be under 1.

25 MR. DONOHUE: That's all I have, Mr.

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1 Chairman.

2 CHAIRPERSON GRIFFIS: Excellent. Thank
3 you. Any closing remarks, or that's what you wanted
4 to accomplish?

5 MR. DONOHUE: That's what I wanted to
6 accomplish. I think I can rest there.

7 CHAIRPERSON GRIFFIS: Okay. Good. Thank
8 you very much.

9 Any follow up, last-minute questions?
10 Concerns?

11 VICE CHAIRPERSON MILLER: I just have one
12 other basic general concern. It sounds like it would
13 be a practical difficulty for there to be a restaurant
14 here and a residential unit based on the case you have
15 made. My question is -- and I guess there could be a
16 carryout, but to me it sounds like that's more
17 detrimental to the community. But you're not saying
18 there couldn't be any commercial use of that space
19 that would be compatible with the residential unit,
20 that any commercial space would result in a practical
21 difficulty.

22 MR. DONOHUE: I think I come at it a
23 slightly different way, which is to say that if you
24 take the commercial component of 1.5 and what -- this
25 is a 1320 square foot lot now, so there's 650 or so

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1 square feet left over, and when you take the issues of
2 code and access and everything else, what is left for
3 residential would be virtually unusable and, in my
4 words, essentially wasted. I think it would be vacant
5 space.

6 CHAIRPERSON GRIFFIS: Okay. You know,
7 it's interesting, in the C-2-A, there is a residential
8 recreation requirement, is there not? Fifteen
9 percent. Twenty percent. If you were to provide a
10 unit of 500, would you have to provide 20 percent of
11 the gross floor square footage? Because there is --
12 I'm not aware of any minimum square footage that
13 exempts you from it. There's not like 3,000 square
14 feet free of residential. You would have to provide
15 residential rec here, wouldn't you?

16 MR. DONOHUE: Well, then, we're going to
17 have to come in for an addition. We're going to go to
18 2.5 FAR now to get the residential recreation space.

19 CHAIRPERSON GRIFFIS: Isn't that correct,
20 Mr. Moore? So 20 percent of 600 --

21 COMMISSIONER HILDEBRAND: So if they were
22 to provide residential, they would have to come in for
23 a relief to not provide the residential recreation
24 space.

25 CHAIRPERSON GRIFFIS: Unless they built a

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1 third floor.

2 COMMISSIONER HILDEBRAND: And used the
3 roof.

4 CHAIRPERSON GRIFFIS: And used the roof.

5 COMMISSIONER HILDEBRAND: As long as it's
6 more than 25 feet deep.

7 CHAIRPERSON GRIFFIS: Which that would
8 leave them above two and a half FAR, putting the third
9 floor on --

10 COMMISSIONER HILDEBRAND: Because they're
11 over lot occupancy by --

12 CHAIRPERSON GRIFFIS: And then they would
13 be over lot occupancy on that.

14 COMMISSIONER HILDEBRAND: Well, they are
15 already over lot occupancy like 20 percent -- 40
16 percent. There's 60 percent lot occupancy in the
17 C-2-A.

18 CHAIRPERSON GRIFFIS: The first floor is
19 allowable 100 percent and the second floor is
20 nonconforming. Interesting. All right. So we can
21 make a more difficult application if we really spent
22 the time to figure it out. But that's an interesting
23 aspect I hadn't thought of. So 20 percent -- I mean,
24 let's think about it. I mean, 10 percent of 600 is
25 60; is that right? It's past 4:00. I can't do math

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1 after 4:00. So it's 120 minus the 660 of the total
2 gross that we had to commit, so it's 120, which brings
3 us down -- he's the math whiz today --

4 COMMISSIONER HILDEBRAND: Five-forty.

5 CHAIRPERSON GRIFFIS: Okay. And then we
6 have to subtract out any sort of common corridor, and
7 then god forbid we actually look into the actual
8 useable space, which is going to be less when we go
9 inside the walls, not just exterior wall to exterior
10 wall. So it does start to be a little bit -- I don't
11 know, I guess that's practically difficult. That's an
12 interesting point.

13 Okay. Anything else? Any other questions
14 of the applicant? I think the record is fairly full
15 on this. Okay.

16 I'm prepared to move forward with this
17 today. I think the record is full. I didn't have any
18 indication in the hearing that we were looking for
19 additional information outside of, Mr. Hildebrand, you
20 were bringing up existing condition, new condition,
21 and documentation. Unless you feel strongly enough
22 that we keep the record open to have that submitted
23 clarification, I think a lot of it has been walked
24 through and explained. As an interior renovation, of
25 course, we're looking at documents and, you know,

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1 actually having the ANC commissioner with us to talk
2 about the actual history of it and describe the
3 interior, I'm ready to move with this indicating yes,
4 and I think we ought to continue under a motion and
5 have our deliberations in that fashion.

6 I would move approval of Application 17231
7 of Teofila Ayala. I can get the last name, not the
8 first name too easily. I'm terribly sorry. That
9 would be, of course, for the variance from the floor
10 area ratio requirements under 771 to allow the
11 conversion of the existing building or a portion of
12 the existing building to be utilized as a restaurant
13 at 3568 14th Street, Northwest, and I would ask for a
14 second.

15 MEMBER MANN: Second.

16 CHAIRPERSON GRIFFIS: Thank you, Mr. Mann.

17 First of all, in terms of the uniqueness,
18 I think the Office of Planning and certainly the
19 applicant and ourselves have looked at this and agree
20 that there are aspects of uniqueness, and depending on
21 whose report you are looking at, there are different
22 levels of persuasion.

23 I think the applicant and, quite frankly,
24 the architectural documentation are quite persuasive
25 that there is a uniqueness to this, not only the

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1 circulation, the door patterns, but that this is a
2 corner structure and a particularly unique shape.
3 Then as you look into that -- and in addition to that,
4 the dimensions of that.

5 Now, the dimensions I wouldn't say
6 necessarily put it into the threshold of great
7 uniqueness on its own, but the uniqueness actually
8 comes out of when the zoning requirements are laid
9 onto it in terms of the mixed use in C-2-A. So we
10 have the shape, the size and location in terms of the
11 corner, and I would say the dimensions of this -- how
12 one accommodates that which is required. If you have
13 a matter-of-right FAR to be utilized, how do you
14 satisfy the other requirements and still utilize the
15 existing building? So we have zero sum square
16 footage. It can be carved up in certain ways and in
17 the matter-of-right C-2-A, the one and a half can be
18 utilized as commercial, and once that is done, what is
19 left over? And that's where the dimensions and that's
20 where the existing stair, the dimensions and the width
21 and the shape of this start creating the practical
22 difficulty of if the residential -- or the
23 matter-of-right uses were put into the building in the
24 area requirement, how it would be accommodated based
25 on, one, the building code, the separation, the

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1 circulation, the vertical circulation, the horizontal
2 circulation, if you mixed uses on that second level.

3 Then we just discovered, you know, looking
4 at this, the regulations themselves, there may be an
5 added use that needed to be accommodated. Where is
6 the residential recreation space? If 50 percent of
7 that would have to be provided outside of the 20
8 percent, which would be -- you would have to have 60
9 square feet -- that's just rough numbers -- 60 square
10 feet of residential in the exterior. Well, where does
11 that go? I mean, is it on the roof, which is another
12 staircase that goes all the way through this?

13 Again, as I somewhat led us on to a larger
14 discussion of the C-2-A -- C-2-A is an interesting
15 zone. I mean, I'm fully supportive of mixed use and
16 I absolutely agree and concur with Mr. Moore. Mr.
17 Moore's position and the Office of Planning is, you
18 know, the best-case scenario, it's mixed use, it's
19 retail commercial first, and it's residential up
20 above. That is a fabulous urban model. That's a
21 fabulous 14th Street model to show, you know,
22 neighborhood accommodating retail and people that live
23 there that utilize it. In this scenario, I think it's
24 shown to be much more difficult and practically
25 difficult in terms of accommodating that.

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1 Whether it would impair the intent and
2 integrity of the zone plan, I don't -- I haven't
3 persuaded that it would in that we're not
4 fundamentally changing the character of the
5 neighborhood overall because one has to look at, will
6 this one building somehow touch off or change
7 fundamentally the zoning, the mixed-use aspect of
8 this, and you can look at it two ways: Would
9 providing a 400-square-foot residential unit, which
10 would be kind of a bathroom, a kitchenette, and a
11 walk-in closet, would that fundamentally satisfy and
12 preserve the C-2-A zone and the zone plan and map, or
13 is the overall picture of this as this retail
14 commercial fits into the 14th Street corridor, is that
15 part of the mix and is it part of the mix zone?

16 I think if we were looking at variances
17 down the block and all these were 100 percent
18 converting and all the residential FAR was
19 disappearing, I think the accumulation effect of that
20 of what we knew of may well bring it into a larger
21 picture and may be more persuasive, but in this sense,
22 I don't think it would.

23 Then going to the last in terms of the
24 public good: Would it be satisfied here or would it
25 actually be detrimental to the public good? I think

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1 we have heard great testimony this afternoon about
2 certainly the appropriateness of some types of retail
3 establishments and others that aren't. You know, I
4 don't know we have so much jurisdiction going into
5 that, but we certainly have some control over that,
6 and I think it has been said that this would not have
7 a negative effect, and it certainly doesn't have a
8 negative effect in terms of its matter-of-right use.
9 I know this area will be very diligent in watching the
10 operations of anything that might happen here and
11 possibly be the basis of a great successful business
12 or the ending of a bad business.

13 So all in all, I haven't seen anything
14 that is persuasive in terms of somehow impairing the
15 public good, but let me open it up to others. Mr.
16 Hildebrand?

17 COMMISSIONER HILDEBRAND: Well, the only
18 thing I would consider is that with the restaurant
19 use, you're going to have a garbage
20 collection/disposal issue. Since you are at 100
21 percent lot occupancy and you have no alley access,
22 that means that all that will have to take place on
23 the public street. So I think it's something to
24 really consider, how that function is going to be
25 handled and not have a negative impact on either Perry

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1 Street or 14th Street.

2 CHAIRPERSON GRIFFIS: Right.

3 COMMISSIONER HILDEBRAND: Particularly
4 since your rear kitchen door directly abuts the
5 entrance to a townhouse that faces Perry Street. I am
6 very concerned about how you plan on accommodating
7 refuse from your establishment.

8 CHAIRPERSON GRIFFIS: Good. And I think
9 that's an excellent point. Actually, it's a good
10 point to bring up in our deliberation because it
11 really -- it is outside of our jurisdiction in terms
12 of looking at this for the variance case, but it
13 certainly is a good directive to the owner and
14 operator of the restaurant to keep in mind and work
15 with the community on what works best for the business
16 and also for the community and the residents.

17 Clearly, the Department of Public Works
18 and the Health Department will have a lot to say of
19 those aspects in terms of how things are contained and
20 packaged and put out for commercial haulers, but it is
21 an interesting point. The Health Department would
22 also have a lot to say, of course, about the venting
23 and the hoods out of the kitchen so that they don't go
24 -- well, so that they are code compliant.

25 Okay. Others? Yes, Ms. Miller.

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1 VICE CHAIRPERSON MILLER: I think the way
2 I come down finally on this case is it sounds like if
3 they use the commercial FAR that they are entitled to
4 as a matter of law or as a matter of right that there
5 is such a practical difficulty to accommodate the
6 residential space that's remaining that they would not
7 do that, and I don't think they are required to do
8 that. So that space would actually remain unused, and
9 I don't think that would benefit the community in any
10 way.

11 I think that we've heard testimony that a
12 restaurant actually would be more compatible with the
13 residential component in this mixed-use area than
14 would be the use that could share that restaurant --
15 could share the residential space, which was the
16 previous use as a carryout.

17 I don't see a substantial detriment in
18 this case is my bottom line.

19 CHAIRPERSON GRIFFIS: Good. Anything
20 else?

21 Very well. We do have a motion before us.
22 It has been seconded. I would ask for all those in
23 favor of the motion to signify by saying aye.

24 (Chorus of ayes.)

25 CHAIRPERSON GRIFFIS: Opposed?

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1 Abstaining?

2 (No response.)

3 CHAIRPERSON GRIFFIS: Ms. Bailey.

4 MS. BAILEY: Thanks, Mr. Chairman. The
5 Board has voted 4-0-1 to approve the application. Mr.
6 Griffis made the motion; Mr. Mann second; Mrs. Miller
7 and Mr. Hildebrand are in agreement; and Mr. Etherly
8 is not present at this time.

9 CHAIRPERSON GRIFFIS: Excellent. I don't
10 see any reason why we wouldn't waive our regulations
11 and issue a summary order on this unless Board members
12 feel differently.

13 MS. BAILEY: Thanks, sir.

14 CHAIRPERSON GRIFFIS: Good. Thank you
15 very much, Ms. Bailey.

16 Thank you all. Appreciate it. Good to
17 see you all.

18 MR. DONOHUE: Thank you for your time.

19 CHAIRPERSON GRIFFIS: Have a pleasant
20 evening. Get home before it starts to snow; there's
21 a blizzard on the way. No, I'm kidding.

22 Mr. Moore, thank you very much. Excellent
23 report. Good to see you.

24 Okay. Ms. Bailey, is there anything else
25 for us this afternoon?

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1 MS. BAILEY: That's it, Mr. Chairman.

2 CHAIRPERSON GRIFFIS: Very well, then.

3 Let's adjourn the 14 December '04 session.

4 (Whereupon, at 4:46 p.m., the public
5 hearing adjourned.)

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